



Lease

Part of 248 Gloucester Street, East Victoria Park

Town of Victoria Park
(Landlord)

Perth Basketball Association Inc
(Tenant)

Our Ref: DLP:20230867
#3783014v2

Draft

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Draft

Form 4
Commercial Tenancy (Retail Shops) Agreements Act 1985
 Section 6A [r. 9]

Tenant Guide

For New Retail Shop Leases from 1 January 2013

This guide is intended to assist you, as a tenant, to understand some of your legal rights and obligations in relation to a retail shop lease under the *Commercial Tenancy (Retail Shops) Agreements Act 1985* (the **Act**). This guide does not replace financial, legal or business advice.

The Act and the regulations are available from the State Law Publisher at www.slp.wa.gov.au.

WHAT IS A RETAIL SHOP LEASE?

Entering into a lease for a retail shop means that you (the **tenant** or **lessee**) are entering into a legally binding contract with the landlord (or **lessor**). The lease agreement sets out your rights and obligations in relation to the use of the retail shop.

A lease cannot override the requirements of the Act.

The Act regulates some of the provisions which may be contained in your lease agreement, including the following:

- rent reviews
- options to renew a lease
- terminating a lease
- operating expenses (or outgoings)
- trading hours.

Which leases are covered by the Act?

The Act generally applies to leases for premises with a lettable area of 1,000 m² or less:

- that are used for carrying on a business and that are in a retail shopping centre
- that are not in a retail shopping centre, but that are used (or predominantly used) for the sale of goods by retail
- that are used for conducting a 'specified business' — specified businesses include, drycleaning, hairdressing, beauty therapy, shoe repair and video or DVD stores (a list of all specified businesses is available from the Department of Commerce at www.commerce.wa.gov.au).

There are some retail shops with a lettable area greater than 1,000 m² that are also covered by the Act — a list of these premises can be obtained from the Department of Commerce at www.commerce.wa.gov.au.

The Act generally does not apply to leases to publicly listed companies.

(See section 3(1) of the Act, definition of retail shop lease.)

When is the lease 'entered into'?

A lease is usually entered into when both parties have signed it. However, a lease is still valid even if the lease document hasn't been signed by the parties if:

- the tenant takes possession of the shop premises; or

- the tenant starts paying rent.

(See section 3(4) of the Act.)

What you should do:

- *if necessary, seek advice as to whether your lease is covered by the Act*
- *establish the area of the retail shop under the lease and have this verified if necessary.*

INFORMATION YOU SHOULD HAVE BEFORE ENTERING INTO A LEASE

Before entering into a lease you should do the following:

- carefully read this tenant guide
- carefully read the disclosure statement provided by the landlord or the landlord's agent
- carefully read any written lease document (including any assignments, extensions or deeds of variation)
- obtain independent financial, legal and business advice.

Rent, the term of the lease, options, outgoings and related costs are open to negotiation with the landlord. Make sure that you understand these, and all other aspects of the lease, before signing it. To avoid disputes at a later stage, you should make sure that all agreements that you have made are in writing and that the lease documents are consistent with any representations made by the landlord or the landlord's agents.

What you should do before signing or entering into a lease:

- *seek independent legal and business advice before entering into a lease*
- *make sure you understand the lease and your rights, liabilities and obligations before signing it*
- *seek advice from financial experts to ensure you understand the costs of running the business.*

Tenant Guide to be located in lease

A new retail shop lease must include this tenant guide at the front of the lease.

If the landlord does not give you a tenant guide, you may have the right to do either or both of the following:

- terminate (end) the lease at any time up to 60 days after the lease was entered into (after this time you may apply to the State Administrative Tribunal for an order to terminate the lease)
- apply to the State Administrative Tribunal for an order for compensation for any monetary loss suffered by you.

(See section 6A of the Act.)

Disclosure statement to be given to you by landlord

At least 7 days before a lease is entered into the landlord must give you a disclosure statement. The disclosure statement sets out important facts about the retail shop and the lease. A copy of this tenant guide, the form of lease and annual estimates of expenditure in relation to operating expenses should be attached to the disclosure statement.

If the landlord does not give you a disclosure statement or gives you a disclosure statement that is incomplete or contains incorrect information you may have the right to do either or both of the following:

- terminate (end) the lease at any time up to 6 months after the lease was entered into

- apply to the State Administrative Tribunal for an order for compensation for any monetary loss you have suffered.

The disclosure statement should be in a prescribed form (this form is Form 1 of Schedule 2 to the *Commercial Tenancy (Retail Shops) Agreements Regulations 1985* and is available from the Department of Commerce at www.commerce.wa.gov.au). It is important to read the statement carefully and make sure it includes all verbal and written agreements, promises or commitments made during negotiations with the landlord or the landlord's agent (for example, any representations about customer traffic).

The disclosure statement should also contain details about the following:

- the landlord's property, such as the total lettable area, tenancy mix and services provided
- the shop premises, such as location, area and services provided
- key terms and conditions of the lease such as rent, term of the lease, options to extend the term and rent review
- permitted use of the premises
- your contribution to the landlord's expenses (operating expenses)
- any additional charges payable by you, such as shop fitout or contributions to marketing and sinking funds.

By signing the disclosure statement you are acknowledging that you understand the basis for the retail shop lease with the landlord. If you do not understand or agree with anything in the disclosure statement you should advise the landlord immediately.

It is vital that you are satisfied that the disclosure statement sets out all relevant information regarding the retail shop and (where applicable) the shopping centre building and property. If necessary, you should check details by making relevant enquiries and by seeking appropriate independent legal or expert advice.

(See section 6 of the Act.)

What you should do:

- *make sure that you understand the disclosure statement before signing it and ensure it includes any agreements you reached during negotiations and any promises made to you by the landlord or their agent.*

Disclosure by the tenant

The landlord may ask for details of your retailing experience and financial capacity to establish and trade profitably and professionally. Any information provided to the landlord by you must also be correct and contain no misleading information.

PERMITTED USE OF THE RETAIL SHOP

The permitted use clause in a lease is very important as it sets out the type of business that you can run from the premises. You should ensure that the description of permitted use is broad enough to cover the type of business that you want to operate and, if anticipated, to allow you to expand the business.

The kind of things to consider about permitted use include:

- for a hairdresser, does the permitted use include providing beauty treatments?
- for a takeaway shop, can the type of food be changed?
- your future plans for the business.

You should also check that any local government approvals are in place for the type of business that you plan to operate. Avoid potential disputes by getting the approvals you need in writing.

A permitted use clause in a lease does not mean that you have the exclusive right to carry on a particular type of business in a shopping centre. Exclusivity is a separate issue that needs to be agreed separately with the landlord and included in the lease agreement.

What you should do:

- *make sure the lease and the landlord's disclosure statement describe the shop's permitted use and that this description is broad enough so you can expand or sell the business*
- *check that local government approvals are in place for the business you plan to conduct — get the approvals in writing*
- *confirm whether or not you have an exclusive right to carry on your particular type of business.*

TERM OF THE RETAIL SHOP LEASE

The term of a lease is the length of time for which you can rent the shop. The lease must set out the lease term and may also include one or more options to renew or extend the term.

The length of the term of the lease is critical because it should be long enough to enable you to recover your investment, make a profit and sell the business, if you wish.

Minimum of 5 years

In most cases, the Act gives a tenant who is entering into a new lease a right to a minimum 5 year lease term. The 5 year term can be a combination of the initial term and options to extend the lease (for example, an initial term of 2 years and an option to renew of 3 years). The initial term does not need to be 5 years.

If the lease does not provide for options to extend the lease to a 5 year term, you have a legal right to do so (often called a 'statutory option'). You can exercise this option by giving the landlord written notice in the standard form at least 30 days prior to the expiry of the term of the lease (the standard form is Form 3 of Schedule 2 to the *Commercial Tenancy (Retail Shops) Agreements Regulations 1985* and is available from the Department of Commerce at www.commerce.wa.gov.au). Although the Act allows you to extend the lease to a 5 year term, you do not need to extend the lease for the whole of this period if you choose not to.

The right to a 5 year term will only apply to retail shop leases with a term of more than 6 months (this includes any lease where the tenant has been continuously in possession of the premises for more than 6 months).

(See section 13 of the Act.)

The term can be longer or shorter than 5 years

Even though the Act gives tenants a right to a minimum 5 year term, you can negotiate a term that is longer than 5 years (for example, a 10 year term, or a 5 year initial term with 2 options to renew for a further 5 years each).

In some circumstances, you may agree to a term shorter than 5 years, but this must be your decision and needs to be approved by the State Administrative Tribunal.

(See section 13(7b) of the Act.)

Exercising an option to renew

It is important that you exercise an option to renew a lease in the way set out in the lease (you may need to let the landlord know in writing and within certain timeframes). If you do not exercise an option to renew properly the landlord may not be obliged to renew the lease.

The Act requires the landlord to give you written notice of the expiry date for any options to renew (the date on which the option to renew is no longer valid). You must receive this notice between 6 and 12 months before the expiry date. If the landlord fails to give you notice the option expiry date may be extended.

(See section 13C of the Act.)

At the end of the lease term

At the end of the term of the lease and the use of any options to renew the lease, the landlord does not have to renew the lease and you will have no further rights to occupy the premises. In some instances the landlord may allow you to continue to occupy the premises on a month to month basis.

Within 12 months before the end of the lease term you can make a written request to the landlord asking whether the landlord intends to renew the lease. The landlord must reply to such a request in writing within 30 days.

(See section 13B of the Act.)

What you should do:

- *seek advice as to the appropriate lease term for your business*
- *don't assume that you will get a new lease at the end of the lease term — you need to make sure that the term of your lease is appropriate for your business structure*
- *seek advice as to the landlord's intentions at the end of the lease term as early as possible so that you can plan accordingly.*

Does the lease include redevelopment or relocation clauses?

Many leases include a clause allowing a landlord to terminate a lease before the end of the agreed lease term if the premises are to be redeveloped. In some instances the landlord may offer to relocate a tenant to alternative premises.

For the initial 5 years of a lease term, a redevelopment or relocation clause may only be included in a lease if:

- it is in the prescribed form (see item 2 of Schedule 1 to the Commercial Tenancy (Retail Shops) Agreements Regulations 1985 and is available from the Department of Commerce at www.commerce.wa.gov.au); or
- it has been approved by the State Administrative Tribunal (if the parties have agreed to a provision that is different to the prescribed form).

If 5 years of the term have already expired, then the clause must be in accordance with the provisions of the Act — which sets out requirements in relation to notice, offer of alternative premises, payment of the tenant's reasonable costs and payment of compensation.

(See section 14A of the Act.)

What you should do:

- *carefully look at any redevelopment or relocation clause in the lease and consider:*

- *what commitment is the landlord giving about relocation of the shop – will the new location and rental be comparable to the current premises?*
- *what compensation is the landlord offering you if your trade is affected?*
- *what effect will it have on your business?*
- *seek independent financial, legal and business advice on the clause.*

RENT

Rent is usually the largest ongoing payment required under a lease. The Act does not regulate what the rent should be. However, the Act includes some rules relating to rent based on turnover and review of rental.

Types of rent

The initial rent for a shop is a matter for negotiation between the landlord and the tenant. Rental for retail shops can vary considerably depending on the location, the size of the shop, the term of the lease and the type of business.

Some common methods of determining rent are:

- net rent — an agreed base rent plus a contribution to the landlord's operating expenses or outgoings
- gross rent — an all-inclusive payment for all the shop's occupancy costs
- semi-gross rent — an amount charged for rental inclusive of some outgoings (for example, the tenant may pay the semi-gross rent plus its proportion of rates and taxes)
- turnover rent or percentage rent — a component of rent that is determined as a percentage of the tenant's turnover during a specified period.

What you should do:

- *seek expert advice as to the basis for determining rent that best suits your business operations*
- *pay your rent on time — if you don't pay your rent, the landlord may be able to end your lease.*

Rent based on turnover

Some leases base rent (or a part of the rent) on a percentage of the turnover of the tenant's business.

If you have agreed to a rent based on turnover, then:

- the lease must set out an agreed formula
- your agreement must be formalised in writing on the prescribed form before the lease is entered into (the prescribed form is Form 2 of Schedule 2 to the *Commercial Tenancy (Retail Shops) Agreements Regulations 1985* and is available from the Department of Commerce at www.commerce.wa.gov.au).

The Act also recognises the confidentiality of turnover figures to a retail business and limits the use of this information.

(See section 7 of the Act.)

The landlord cannot require you to provide turnover figures unless your rent is to be based on turnover. (See section 8 of the Act.)

RENT REVIEW

Most leases will state that the rent will be reviewed at regular intervals.

At each review time the lease must set out a single basis on which the rent is to be reviewed, this can include:

- the market rent
- an increase by reference to the Consumer Price Index (CPI)
- a set percentage increase
- an agreed formula or combination, for example, CPI + 2%.

The types of review may vary over the life of the lease (the lease may state that reviews are to alternate between CPI and market review). However, the lease cannot give the landlord the right to choose the greatest return from a range of rent types at any one review (for example, the lease cannot state that the increase is to be CPI or 5% whichever is higher).

The lease may specify only one method of review at a time.

Market rent

The Act provides that market rent is the rent obtainable for the retail shop in a free and open market if it were vacant and to be let on similar terms.

The market rent is not to take into account:

- the goodwill of the business
- any stock, fixtures or fittings that are not the property of the landlord
- any structural improvements paid for or carried out by the current tenant.

Market rent review

If your lease specifies a market rent review, the Act provides that both parties can initiate the market rent review process and if the parties cannot agree on the rental:

- appoint a licensed valuer (agreed to by both parties) to determine the new rental; or
- request that the Small Business Commissioner appoint a valuer to determine the rental; or
- each appoint a valuer to determine the rental.

A landlord is required under the Act to provide a valuer with certain information in relation to retail shops in a shopping centre or in the same building in order to assist the valuer to decide the market rent. A valuer must keep this information confidential.

A disagreement regarding the new rent may be referred to the Small Business Commissioner for mediation or to the State Administrative Tribunal for determination. Until the new rent is agreed, the current rent continues to apply. Once the higher or lower rent is agreed, adjustments will be backdated to the review date.

No 'ratchet' clauses

Any provision in a lease about a market review that seeks to prevent the rent from rising or falling above or below a certain level is void. The lease must allow the rent to rise or fall to a level supported by market evidence, for example, a clause cannot stop the rent from decreasing on a market review.

(See section 11 of the Act.)

What you should do:

- *make sure that you understand how your rent is to be calculated and what other payments may be required*
- *consider whether your business can sustain the current rent, rent increases and operating expenses over the term of the lease.*

CONTRIBUTION TO THE LANDLORD’S OPERATING EXPENSES OR OUTGOINGS

You may be required to contribute to a proportion of the landlord’s expenses. The landlord’s expenses are described in the Act as operating expenses. Leases can also refer to them as ‘outgoings or variable outgoings’.

Operating expenses are the costs of operating, repairing or maintaining the landlord’s premises including any building common areas. Typically these costs include the rates and taxes, cleaning, air conditioning, security, insurances and other valid expenses of running the property.

Details about the operating expenses and their payment are to be set out in the lease and the disclosure statement.

No capital expenses or management fees

The landlord cannot recover the following from you as an operating expense:

- management fees
- capital expenditures in relation to a retail shopping centre (for example, asset replacement)

Operating expenses are not to exceed the ‘relevant proportion’

Your contributions to operating expenses are negotiable. The Act provides that a tenant cannot be required to contribute more than the ‘relevant proportion’ in relation to an operating expense. Nothing prevents you from negotiating with the landlord to pay less than the relevant proportion.

The relevant proportion is calculated by comparing the lettable area of your shop to the total lettable area of the shopping centre or the group of premises to which the expense relates.

$$\text{relevant proportion} = \frac{\text{lettable area of shop}}{\text{total lettable area}}$$

Referable expenses

In certain circumstances an operating expense may be incurred in relation to only some of the businesses in a centre or group of premises, for example, specialised cleaning used by only a few tenants. This is called a ‘referable expense’ and can be allocated using the total lettable area of only the shops to which the referable expense relates.

What you should do:

- *make sure that you understand the operating expenses before signing the lease*
- *budget to meet the operating expenses payments.*

Landlord to provide estimates and statements for operating expenses

In order to recover operating expenses from you, the landlord must provide you with:

- an annual estimate of expenditure for each operating expense

- an audited operating expenses statement for each accounting period detailing all expenditure by the landlord (this statement must be given within 3 months after the end of the accounting period).

(See section 12 of the Act.)

SINKING FUNDS

If your shop is in a shopping centre and you have agreed to contribute to a fund for major repair and maintenance works, your contributions are protected under the Act. These funds are subject to accounting and audit provisions and should not be spent by the landlord on anything other than the purpose for which they are collected. These costs may be in addition to operating expenses charged under the lease.

Capital works must be paid for by the landlord and would include such works as the construction of extensions to the shopping centre and the replacement of major plant and equipment.

(See section 12A of the Act.)

OTHER FUNDS AND RESERVES

The landlord is also required to properly account for the administration, expenditure and auditing of any other funds or reserves that you have agreed to contribute to for specific purposes such as for marketing or promotion. These costs may be in addition to operating expenses charged under the lease.

(See section 12B of the Act.)

FITOUT AND REFURBISHMENT

Tenants are usually responsible for the costs of installing fixtures and fittings in the shop (the *fitout*). There may be a standard of construction required for fitouts. You may also be responsible for some or all of the landlord's costs of preparing the shop for the fitout.

Fitout requirements must be detailed in the disclosure statement.

A provision in a lease requiring a tenant to contribute to the cost of any of the landlord's finishes, fixtures, fittings, equipment or services will be void unless the disclosure statement notifies the tenant about the effect of the provision.

(See section 12(3A) of the Act.)

The Act provides that a clause about refurbishment or refitting will be void unless it provides the tenant with enough detail about the required refurbishment or refitting as is necessary to indicate the nature, timing and extent of work required.

(See section 14C of the Act.)

What you should do:

- *ensure that you understand your obligations with regards to the fitout of the premises*
- *if possible, obtain or prepare a condition report prior to entering into the lease so that you have evidence of its condition*
- *ensure you have a sufficient fitout budget as some fitout costs (for example cost of moving plumbing) are often overlooked*
- *discuss variations of standard fitout with the landlord — as this could cost you extra.*

LEGAL FEES

The Act prohibits the landlord from claiming legal or other expenses from you relating to:

- the negotiation, preparation or execution of the lease (or any renewal or extension of the lease)

- obtaining the consent of a mortgagee to the lease
- the landlord's compliance with the Act.

However, if you assign your lease or sub-let the premises, the landlord may claim from you any reasonable legal or other expenses incurred in connection with the assignment or sub-letting.

(See section 14B of the Act.)

TRADING HOURS

The trading hours for your shop may be affected by a number of matters.

Retail trading hours legislation in Western Australia sets out those hours that retailers may open (this can vary depending on the type of business you operate).

If your retail shop is located inside a shopping centre then for practical reasons the opening and closing times for the centre (**core hours**) may be different to the trading hours permitted by law. This should be set out in the disclosure statement by the landlord.

When do you have to open your shop?

A clause in a lease which requires you to open your premises at specified hours or for specified times is void under the Act. For example, you cannot be required to open your shop for the core hours for a centre. You can choose which hours to open your shop.

If you believe that your lease has not been renewed because you did not open at certain times you can apply to the State Administrative Tribunal for compensation.

(See section 12C of the Act.)

What you should do:

- *if your premises are in a shopping centre you should check that the core hours are suitable for your business*
- *find out whether you can open your shop at any times outside of the core hours and find out about what costs are involved*
- *remember that the lease can't require you to open your shop for specified hours or during specified times.*

Standard trading hours and operating expenses

The Act also sets out 'standard trading hours' which are used only for the purposes of allocating operating expenses.

For the purposes of allocation of operating expenses 'standard trading hours' are:

- 8.00 a.m. to 6.00 p.m. Monday, Tuesday, Wednesday and Friday
- 8.00 a.m. to 9.00 p.m. Thursday
- 8.00 a.m. to 5.00 p.m. Saturday.

The Act provides that if you do not open outside standard trading hours, then you cannot be charged operating expenses related to the extended hours (for example, additional security costs).

If, however, you do open outside the standard trading hours, you may be required to pay operating expenses related to the extended hours. These expenses should be calculated based on the lettable area of those shops which were open during the extended hours.

If you are closed for a period during the standard trading hours (for example, if you do not open your shop until 10 a.m.), you may still be charged operating expenses for the time that you are closed, that is, between 8.00 a.m. and 10.00 a.m..

(See section 12(1)(c) of the Act.)

Retail trading hours law may allow you to open at times outside of the standard trading hours (for example, Sunday trading) - however:

- *you can't be forced to open your business*
- *you are not required to make a contribution to operating expenses relating to non-standard hours if you choose not to open during those times.*

VOID CLAUSES

The lease agreement and any other verbal or written agreements cannot include clauses that are contrary to any provision in the Act.

In addition, the Act specifically precludes the lease or any other agreement from containing clauses that:

- require a tenant to pay key money, which is any money or other benefit in addition to rent paid to the landlord or others for the right to lease retail shop premises (See section 9 of the Act.)
- prevent the tenant disclosing the rent it has agreed to third parties, such as other retail tenants or their valuers (See section 11(2a) of the Act.)
- require the tenant to contribute to any fund that applies moneys to capital expenditure in a shopping centre, such as new building works (See section 12(2) of the Act.)
- require a tenant to open for specified hours or during specified times (See section 12C of the Act.)
- prevent a tenant from joining a tenant's association or similar body (See section 12D of the Act.)
- require a tenant to provide turnover figures to the landlord, unless the tenant has agreed to pay rent based on turnover (See section 8 of the Act.).

A clause in a lease that is contrary to the provisions of the Act is void and has no effect.

DISRUPTIONS — COMPENSATION BY THE LANDLORD

The Act states that, if your shop is in a shopping centre, you are entitled to seek reasonable compensation from the landlord if the landlord:

- inhibits or prevents your, or customer, access to the shop premises
- disrupts trading conditions, causing loss of profits to your business
- does not properly repair, maintain or clean the shopping centre premises or common areas.

You will only be entitled to compensation from the landlord if you have given the landlord notice in writing to rectify the problem and the landlord has not done so.

If you cannot agree the amount of compensation with the landlord, you can make an application to the State Administrative Tribunal for a decision as to the amount payable.

In most cases, before making an application to the State Administrative Tribunal you must attempt to resolve the matter through the Small Business Commissioner's dispute resolution processes.

(See section 14 of the Act.)

UNCONSCIONABLE CONDUCT AND MISLEADING AND DECEPTIVE CONDUCT

The Act provides that neither the landlord nor the tenant can engage in conduct that is:

- unconscionable (conduct that is so harsh, oppressive or unreasonable that it goes against good conscience)
- misleading or deceptive.

The State Administrative Tribunal can hear a claim for unconscionable conduct or misleading and deceptive conduct and may make an order for payment of compensation or another appropriate order (such as an order to vary a lease or an order that a party stop doing something).

In most cases, before making an application to the State Administrative Tribunal you must attempt to resolve the matter through the Small Business Commissioner's dispute resolution processes.

(See Part IIA of the Act.)

ASSIGNMENT AND SUB-LEASING

During the term of the lease, your circumstances may change and you may want to sell your business and assign your lease or sub-let all or part of the premises.

Your responsibilities if you assign your lease

If you assign your lease the new tenant 'takes over' and assumes all your rights and responsibilities including rent and any other obligations under the lease from the date of assignment.

Although the Act gives you a right to assign your lease, the landlord may withhold consent on reasonable grounds. Examples of reasonable grounds include:

- if the landlord believes that the new tenant would not be able to meet their financial obligations; or
- if the proposed use of the premises is contrary to the use permitted in the lease.

You will need to write to the landlord seeking consent for assignment of the lease. If the landlord doesn't reply within 28 days, you are entitled to assume the landlord has consented to the assignment.

You may have to pay the landlord's reasonable expenses for assessing a prospective tenant to take over your lease.

Your responsibilities if you sub-lease your shop

If you sub-let all or part of your premises you effectively become the landlord and the person you sub-let to is your tenant. Sub-leasing means that you will still be responsible under the lease to your landlord (for example, you may be liable for the rent if the sub-lessee does not pay).

You will also have obligations to the person you sub-let to, for example, you will need to provide a tenant guide and disclosure statement to your sub-tenant.

Your lease may include restrictions on sub-leasing. You should check your lease and seek advice as to its requirements on sub-leasing.

You may need to write to the landlord seeking consent to sub-lease. If the landlord doesn't reply within 28 days, you are entitled to assume the landlord has consented to the sub-lease.

(See section 10 of the Act.)

What you should do:

- *seek independent legal advice as to the requirements of the Act and your obligations on assignment or sub-leasing.*

DEFAULT OR BREACH OF LEASE

Most leases allow the landlord to terminate (or end) the lease on a breach or default by the tenant (for example, failure to pay rent). You should ensure that you understand the procedures set out in the lease in relation to default. For example, in many instances, your obligation to pay future rent will continue even after a lease has been terminated.

DISPUTES BETWEEN THE TENANT AND LANDLORD

State Administrative Tribunal

If you are unable to resolve a dispute with your landlord over any aspect of your retail shop lease the Act allows the State Administrative Tribunal to deal with these disputes.

Either you or the landlord may initiate this action with the Tribunal by making an application and paying the appropriate fee. The Tribunal generally deals with matters through an initial directions hearing, a mediation process or in a hearing.

(See section 16 of the Act.)

Small Business Commissioner

In most cases, before making an application to the State Administrative Tribunal you must attempt to resolve the matter through the Small Business Commissioner's dispute resolution processes.

(See Part III of the Act and regulation 10.)

Advice about a dispute can be obtained from lawyers with property experience, the Small Business Development Corporation, industry sources, tenant advocates and retail representative groups.

KEEP RECORDS

You should make sure that you keep records of all agreements, undertakings, correspondence (including emails) and other communications with the landlord. Where possible you should confirm things in writing.

Make sure that you diarise important dates in relation to your lease.

If you need to make a claim in the Tribunal you will need to provide appropriate evidence to support your claim.

Lease

Date

2023

Parties

Town of Victoria Park ABN 77 284 859 739 of 99 Shepperton Road, Victoria Park WA 6100
(Landlord)

Perth Basketball Association Inc ABN 40 948 669 807 care of the Leisurelife Centre, 34 Kent Street,
East Victoria Park WA 6101 (Tenant)

Background

- A. The Landlord is the registered proprietor of the Premises.
- B. The Landlord has agreed to lease the Premises to the Tenant and the Tenant has agreed to lease the Premises from the Landlord on the terms set out in this lease.

The parties agree

1 Definitions and Interpretation

1.1 Definitions

In this lease:

- (a) **Air Conditioning Plant** means any plant, equipment, ducting, vents or machinery for heating, cooling or circulating air;
- (b) **API** means the Australian Property Institute Inc (WA office);
- (c) **Authority** means any government or any governmental, semi-governmental, local government, administrative, fiscal or judicial body, department, committee, commission, authority, tribunal, agency, Minister, statutory body or entity;
- (d) **Building** means all improvements erected on the Land from time to time including the Service Facilities and any modifications, extensions or alterations to those improvements;
- (e) **Business Day** means any day other than a Saturday, Sunday or public holiday in Perth, Western Australia;
- (f) **Car Parking and Access Areas** means those parts of the Land which are designed by the Landlord for use in connection with car parking and vehicular access to and from the Land, including all car bays and vehicle access, exit and thoroughfare areas;

- (g) **Commencement Date** means the date specified in Item 4;
- (h) **Common Areas** means those parts of the Land and the Building (other than leased areas) which the Landlord designates as common areas;
- (i) **CPI** means the Consumer Price Index (All Groups Index - Perth) published by the Australian Bureau of Statistics or if that index is discontinued, the index substituted by the President for the time being of Chartered Accountants Australia and New Zealand as an index which reflects changes in the cost of living for the City of Perth;
- (j) **CPI Rent Review Date** means each of the dates specified in Item 7(a);
- (k) **Encumbrance** means any mortgage, easement, restrictive covenant, caveat, memorial or notification and includes any right and interest;
- (l) **Environmental Law** means any Law in connection with or for the protection or improvement of the environment including Laws relating to greenhouse gas emissions or concentrations, pollution, the production of clean energy and any emissions trading scheme;
- (m) **Financial Year** means respectively:
 - (i) the period from the Commencement Date to the next 30 June;
 - (ii) each successive full period of 12 months commencing on 1 July and expiring on 30 June during the Term; and
 - (iii) the period from 1 July in the last year of the Term to the date of expiration of the Term;
- (n) **Fire Services** means all stop-cocks, hydrants, alarms, fire and smoke alarms, drench curtains, fire sprinkler systems, hoses, extinguishers or other fire prevention or safety equipment at, on or serving the Premises or the Land from time to time;
- (o) **Floor Covering** means any surface or material covering the floors of the Premises, including carpets, rugs, tiles and floor boards and any sealer or paint that has been applied to the floors;
- (p) **Item** means an item in the Schedule;
- (q) **Keys** means all keys, access cards or other means of access to any part of the Premises, the Building or the Land;
- (r) **Land** means:
 - (i) the land described in Item 2; and
 - (ii) includes, at the election of the Landlord at any time, any additional land that is owned, developed or used by the Landlord for the purposes of or in connection with this lease or the Building (including for the calculation of any payments owing by the Tenant under this lease),

and any revised description of the land from time to time, whether resulting from subdivision, amalgamation or any other reason;
- (s) **Landgate** means the authority established under section 5 of the *Land Information Authority Act 2006* (WA);
- (t) **Landlord** includes the landlord's successors in title;
- (u) **Landlord's Property** means anything on the Land that is not the Tenant's Property, including the property specified in Item 3 (if any);

- (v) **Law** includes any present or future requirement of any statute, regulation, proclamation, ordinance or by-law, whether State, Federal, local or otherwise;
- (w) **Lettable Area** means the area measured in accordance with the relevant method of measurement as recommended by the Property Council of Australia or the method or criteria which the Landlord otherwise selects as the most appropriate, in respect of an area;
- (x) **Loss** means any damage, loss, cost, expense, liability, claim, action, proceeding or demand, however arising and whether present or future, fixed or unascertained, actual or contingent;
- (y) **Make Good Obligations** means each of the Tenant's obligations under clauses 17.2 and 14(e);
- (z) **Managing Agent** means the person or firm as may be appointed by the Landlord from time to time to manage the Premises and includes the employees and agents of the Managing Agent and if no person or firm is nominated at any time, means the Landlord;
- (aa) **Option Term** means each option term set out in Item 5 (if any);
- (bb) **Outgoings** means every cost, expense or charge that is paid or payable by the Landlord in respect of a Financial Year that is in connection with the ownership, operation, administration, insurance, maintenance, repair or use of the Land, the Building, Common Areas and/or the Premises, including:
 - (i) Rates and Taxes;
 - (ii) insurance premiums and other charges in connection with insurance cover which the Landlord takes out in connection with this lease;
 - (iii) costs in connection with:
 - (A) cleaning, including rubbish, sullage and sanitary storage and removal;
 - (B) prevention and removal of graffiti;
 - (C) caretaking and security;
 - (D) providing toilet requisites, washing equipment and consumables, electric hand dryers, sanitary bins and all associated services;
 - (E) preventing, controlling or eradicating pests and vermin; and
 - (F) gardening, landscaping and reticulation;
 - (iv) costs in connection with maintenance, refurbishment and repair;
 - (v) costs in connection with the Service Facilities (including Air Conditioning Plant), including:
 - (A) supplying, providing, running, maintaining, servicing, upgrading, repairing, testing and (where applicable) replacing the Service Facilities; and
 - (B) installation, testing and reading of instruments, gauges, thermometers and meter reading equipment, including connection charges and rents;

- (vi) costs in connection with any signage, including any line markings, symbols and displays;
 - (vii) costs in connection with the Car Parking and Access Areas, including:
 - (A) providing, maintaining, surfacing and managing the Car Parking and Access Areas; and
 - (B) all levies, charges or fees (if any) imposed on the Landlord by an Authority with respect to the car parking bays or facilities on the Land;
 - (viii) unless prohibited by the Retail Shops Act, fees and expenses paid or payable to the Managing Agent;
 - (ix) costs in connection with administration, including:
 - (A) postage, petties and disbursements;
 - (B) subject to the Retail Shops Act, costs of and in connection with the preparation of Outgoings reconciliation statements and audit costs in respect of verifying or determining Outgoings; and
 - (C) costs of property condition reports and inspection fees;
 - (x) costs in connection with Environmental Laws, including doing anything the Landlord reasonably considers to be necessary or beneficial having regard to any Environmental Laws or environmental rating;
 - (xi) all contributions levied by the Strata Company (if any) on the Landlord, including all administrative fund levies, reserve fund levies, sinking fund levies and other strata levies;
- but excluding:
- (xii) costs of a capital or structural nature;
 - (xiii) a cost which the Law does not allow the Landlord to recover from the Tenant;
- (cc) **Painted Surface** means any internal or external surface of the Premises (including any walls, ceiling, floor, skirting, cornices, doors or frames) which was painted, treated or wallpapered at the Commencement Date or during the Term;
 - (dd) **Permitted Use** means the permitted use specified in Item 8;
 - (ee) **Pipes** means any pipes, drains and conduits in or connected to the Premises;
 - (ff) **PPSA** means the *Personal Property Securities Act 2009* (Cth);
 - (gg) **Premises** means the premises described in Item 1 and includes the Landlord's Property in or on it. In the case of premises that are not standalone, the boundaries of the Premises are:
 - (i) the upper surface of the floor, below any Floor Coverings;
 - (ii) if there is a suspended ceiling, the upper surface of that suspended ceiling, or if there is no suspended ceiling, the lower surface of the ceiling slab or roof (as the case may be);
 - (iii) the centre line of any inter-tenancy walls and any external walls;
 - (iv) the outside surface of any external glass windows; and

- (v) the outside surfaces of the Shopfront;
- (hh) **Premises Plan** means the plan set out in Annexure A to this lease;
- (ii) **Rates and Taxes** means all rates, taxes, levies, charges, duties and impositions of any kind now or in the future charged, assessed or imposed by any Authority in connection with the Land, the Building, the Premises or the ownership or occupation of the Land, the Building or the Premises, including:
 - (i) council rates and charges together with all rubbish removal rates and charges;
 - (ii) land tax and Metropolitan Region Improvement Tax on the basis that the Land is the only land owned by the Landlord;
 - (iii) any fee, levy or charge in relation to any car bays or parking facilities on the Land (including any levy imposed by the Department of Transport);
 - (iv) any fire services levy; and
 - (v) water drainage and sewerage rates and service charges;
 but excluding the Landlord's income tax and capital gains tax;
- (jj) **Related Party** means, in relation to a party:
 - (i) a related entity (as defined in the *Corporations Act 2001* (Cth)) of that party; or
 - (ii) an associate (as defined in the *Income Tax Assessment Act 1997* (Cth)) of that party; or
 - (iii) controlled by or capable of being controlled by that party (whether by virtue of equity ownership, directorships or any agreement or arrangement);
- (kk) **Rent** means the rent specified in Item 6 or as varied or reviewed from time to time under this lease;
- (ll) **Rent Commencement Date** means the date specified in Item 6(c);
- (mm) **Rent Review Date** means each of the dates specified in Item 7;
- (nn) **Repaint** means:
 - (i) in respect of painted surfaces, the application of paint by applying an undercoat and two top coats of good quality paint in a colour, brand and type nominated by the Landlord and after removing any wall coverings installed by the Tenant (if any) and filling and patching any holes;
 - (ii) in respect of any treated surface, the treatment of the surface in the same manner as previously treated (including by staining, polishing or sealing), to a type, specification, colour, brand and finish nominated by the Landlord; and
 - (iii) in respect of any wallpapered surface, at the election of the Landlord:
 - (A) the removal of that wallpaper and application of paint in accordance with clause 1.1(nn)(i); or
 - (B) the removal of that wallpaper and re-application of new wallpaper of a type, material, design and brand nominated by the Landlord;

- (oo) **Retail Shops Act** means the *Commercial Tenancy (Retail Shops) Agreements Act 1985* (WA);
- (pp) **Schedule** means the schedule to this lease;
- (qq) **Service Facilities** means any plant, equipment, Pipes, services and apparatus on or servicing the Land, the Building, the Common Areas or the Premises, including Air Conditioning Plant, lifts, Fire Services, wires, cables, conduits, other electronic communication equipment, gas and electrical fittings, power points, toilets, sewerage, plumbing, grease traps and wash basins);
- (rr) **Shopfront** means the shopfront of the Premises, including all windows, doors, window frames and door frames, Tenant's Signage, paint and coatings and any other item or fixture forming part of the shopfront;
- (ss) **Tenant** means the tenant described in this lease and includes:
- (i) if a company or incorporated association, its permitted assigns; and
 - (ii) if an individual, his or her executors, administrators and permitted assigns;
- (tt) **Tenant's Associates** means each of the Tenant's sub-tenants, licensees, officers, employees, contractors, subcontractors, agents, customers, invitees and visitors;
- (uu) **Tenant's Property** means all property which has been installed or brought onto the Premises or the Land by the Tenant or the Tenant's Associates, including stock, fitout, partitions, wiring, fittings, fixtures, goods, equipment, Tenant's Signage and Floor Coverings;
- (vv) **Tenant's Proportion** means in respect of any item of the Outgoings or any Utility Cost:
- (i) the same proportion of that item as the Lettable Area of the Premises bears to the total Lettable Area of all premises on the Land; or
 - (ii) if that item is attributable to, referable to or for the benefit of a group of premises including the Premises, then the same proportion of that item as the Lettable Area of the Premises bears to the total Lettable Area of that group of premises; or
 - (iii) if that item is directly assessed against or is entirely attributable to, referable to or for the benefit of, the Premises, the Tenant or any area that the Tenant has exclusive use of, then 100% of that item;
- (ww) **Tenant's Signage** means:
- (i) any signage, advertising material, ornamentation, decoration or logo, whether painted, applied or otherwise attached; and
 - (ii) any pylon, mast or structure to which those things are attached, which has been installed by the Tenant or the Tenant's Associates;
- (xx) **Term** means the period specified in Item 4 (as may be extended or renewed, including for any Option Term and holding over period of this lease);
- (yy) **Utility Cost** means a cost or charge in connection with the connection, usage or consumption of a Utility Service which is used or consumed in the Premises or by the Tenant or which the Premises has the benefit of;

- (zz) **Utility Service** means a utility or consumable service, including electricity, gas, water, sewerage, data and telecommunications;
- (aaa) **Valuer** means:
 - (i) a valuer licensed under the *Land Valuers Licensing Act 1978* (WA);
 - (ii) is a member of at least 5 years standing with the API; and
 - (iii) at the time of appointment is actively engaged in valuing similar premises to the Premises;
- (bbb) **WHS Laws** means the *Work Health and Safety Act 2020* (WA); and
- (ccc) **Work Standards** means work (including any maintenance, repair or servicing work) that is carried out and completed:
 - (i) promptly and efficiently and to the satisfaction of the Landlord (acting reasonably);
 - (ii) using good quality materials and contractors either approved by or nominated by the Landlord (acting reasonably);
 - (iii) in accordance with plans and specifications approved by the Landlord (acting reasonably);
 - (iv) in accordance with the directions of the Landlord (acting reasonably), including directions about the times when work may be done, when work must not be done, safety standards, noise levels, dust levels and odours;
 - (v) in a manner that does not interfere with or disturb any other occupants of the Land or of other properties;
 - (vi) in accordance with all relevant Laws and the requirements of all relevant Authorities; and
 - (vii) if the work involves the replacement of anything, then the replacement must be at least of equivalent quality, type, colour and specification to the original (or such other quality, type, colour and specification as may be approved by the Landlord in its discretion).

1.2 Interpretation

In this lease, unless the context otherwise requires:

- (a) a month means a calendar month;
- (b) if anything is to be or may be done on a day that is not a Business Day, then it must be done on the next Business Day;
- (c) if a word or phrase is defined in this lease, its other grammatical forms have a corresponding meaning;
- (d) words importing the singular include the plural and vice versa;
- (e) words denoting a gender include any gender;
- (f) an act or omission of any of the Tenant's Associates is deemed to be the act or omission of the Tenant;
- (g) a provision of this lease prohibiting the Tenant from doing or requiring it to do any act or thing requires the Tenant to ensure that the Tenant's Associates comply with that provision;

- (h) the word 'person' includes corporations, firms, unincorporated associations, bodies corporate, authorities and agencies;
- (i) the word 'including' (in any form) is not a word of limitation and is to be taken to be followed by the words 'but not limited to';
- (j) the phrase 'this lease' means this document (including its schedules and annexures) as may be extended, renewed, assigned, varied and supplemented from time to time and includes:
 - (i) the lease of the Premises granted by this document,
 - (ii) any other leasehold interest created by this document; and
 - (iii) any tenancy or other rights, whether legal or equitable, under which the Tenant occupies or is entitled to occupy the Premises including a tenancy for a fixed term, a holding over tenancy, a periodic tenancy or a tenancy at will;
- (k) a reference to any schedule, annexure or attachment means a schedule, annexure or attachment to this lease;
- (l) headings and clause numbers are for convenience only and do not affect the interpretation of this lease;
- (m) a reference to a party to this lease includes the party's successors, permitted substitutes and permitted assigns and, where applicable, the party's legal personal representatives;
- (n) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them occurring at any time;
- (o) a reference to a body or Authority includes a reference, if that body or Authority ceases to exist, to the successor of that body or Authority of if there is no direct successor then to the body or Authority which has substantially the same functions and objects as the first body or Authority;
- (p) no rules of construction will apply to the disadvantage of a party on the basis that that party was responsible for the preparation of this lease or any part of it; and
- (q) an agreement, representation, covenant, warranty, guarantee or indemnity:
 - (i) in favour of two or more persons, is in favour of them jointly and severally; and
 - (ii) given or made by two or more persons, is given and binds them jointly and severally.

2 Grant of Lease

2.1 Lease

The Landlord grants a lease of the Premises to the Tenant for the Term subject to the terms and conditions in this lease and the Tenant accepts that grant.

2.2 Quiet Enjoyment

Subject to the Landlord's rights under this lease and while the Tenant complies with all its obligations under this lease, the Tenant may occupy and use the Premises without the Landlord's interference or interruption.

3 Rent

3.1 Payment of Rent

The Tenant must pay the Rent to the Landlord:

- (a) on and from the Rent Commencement Date during the Term;
- (b) by the instalments, on the dates and in the manner set out in Item 6;
- (c) by electronic funds transfer to an account nominated by the Landlord or as the Landlord may otherwise direct in writing; and
- (d) without any deduction or set-off.

3.2 Review of Rent

- (a) The Rent will be reviewed on each Rent Review Date in accordance with this clause 3.
- (b) The parties agree that:
 - (i) the reviewed Rent is payable from the relevant Rent Review Date regardless of when it is agreed or determined;
 - (ii) until the reviewed Rent is agreed or determined under this clause 3, the Tenant must continue to pay the Rent at the rate that applied immediately before the relevant Rent Review Date; and
 - (iii) when the reviewed Rent has been agreed or determined, the amount of any difference in Rent for the period from the relevant Rent Review Date until the next date on which an instalment of Rent is payable must be paid or allowed with that instalment.

3.3 CPI Rent Review

The Rent payable from and after a CPI Rent Review Date will be the amount represented by A in the formula:

$$A = B \times \frac{C}{D}$$

where:

- B is the annual Rent payable immediately before the relevant CPI Rent Review Date (ignoring rent-free periods, rent reductions, concessions and incentives);
- C is the CPI for the calendar quarter ending immediately before the relevant CPI Rent Review Date; and
- D is the CPI for the calendar quarter ending immediately before the last Rent Review Date or, in the case of the first Rent Review Date, the Commencement Date.

4 Other Payments by the Tenant

4.1 Utility Costs

- (a) The Tenant must pay for all Utility Costs.
- (b) If any Utility Cost is not separately metered or assessed against the Tenant or the Premises, the Tenant must pay a proportion of that Utility Cost, being:
 - (i) the Tenant's Proportion; or
 - (ii) if required by the Landlord (acting reasonably), such other proportion as the Landlord considers fair and reasonable having regard to the Tenant's use of the relevant Utility Service.
- (c) The Tenant must pay each Utility Cost to the Landlord (or directly to the relevant Authority, if required by the Landlord) within 14 days of demand by the Landlord.
- (d) If the Landlord does not provide any Utility Services to the Tenant, then the Tenant must make its own arrangements to obtain and purchase that Utility Service from a supplier.
- (e) The Landlord is not required to install separate meters to measure the consumption of any Utility Service.
- (f) The Landlord may at any time elect to supply any Utility Service directly to the Tenant. If the Landlord makes that election, then:
 - (i) the Tenant must purchase from the Landlord the Tenant's requirements for that Utility Service to the extent that it is supplied to the Tenant by the Landlord;
 - (ii) the amount payable for that Utility Service will be determined by the Landlord but will not exceed the maximum amount that the relevant Authority or usual supplier would ordinarily charge a single consumer for that Utility Service (in accordance with maximum pricing or other regulatory requirements);
 - (iii) the Tenant must pay the Landlord for the Utility Services within 14 days of the Landlord billing the Tenant for that service; and
 - (iv) the Tenant must comply with the Landlord's general terms and conditions of supply as prescribed from time to time.
- (g) If the Tenant fails to pay any Utility Cost to the Landlord in accordance with this clause 4.1, the Landlord may discontinue the supply of the relevant Utility Service until the Tenant has paid the relevant Utility Cost. The Tenant must also pay all costs and charges in respect of reconnecting the Utility Service.

4.2 Outgoings

- (a) The Tenant must pay the Tenant's Proportion of Outgoings to the Landlord.
- (b) The Landlord may require the Tenant to pay the Tenant's Proportion of any Outgoings item:
 - (i) by equal monthly instalments in advance on or before the first day of each month. If the Commencement Date is not the first day of a month, the first and last instalments during the Term will be proportionate; or

- (ii) in full within 14 days of demand by the Landlord and either directly to the Landlord or to the relevant Authority or supplier.
- (c) If the Landlord directs the Tenant to pay any item of Outgoings directly to a third party, then the Tenant must (on request) provide to the Landlord all receipts in respect of the payment.
- (d) Prior to the commencement of each Financial Year, the Landlord will notify the Tenant of the Landlord's estimate of the Outgoings payable by the Tenant for that Financial Year.
- (e) The Landlord may amend the Landlord's estimate at any time (by giving notice to the Tenant) and the Tenant must pay the Tenant's Proportion of the Outgoings in accordance with the Landlord's revised estimate from the date of receipt of that notice.
- (f) Within 3 months after the end of each Financial Year or as soon as is practicable after that period, the Landlord must give the Tenant a statement of the actual Outgoings for that Financial Year. If the statement discloses that:
 - (i) the Tenant's Proportion of the actual Outgoings is more than the Outgoings that have been paid by the Tenant, then the Tenant must pay the deficiency to the Landlord within 14 days after the date of the Landlord's statement; or
 - (ii) the Tenant's Proportion of the actual Outgoings is less than the Outgoings that have been paid by the Tenant, then the Landlord must credit the excess to the Tenant in the next monthly statement or refund the difference.
- (g) If there is a variation of any area relevant to the calculation of the amount of the Tenant's Proportion:
 - (i) the Tenant's Proportion is to be correspondingly varied from the date the variation of the area takes effect; and
 - (ii) the Landlord will notify the Tenant of the variation of the Tenant's Proportion and the effective date of the variation as soon as is practicable.

5 Use of Premises

5.1 Positive Obligations

The Tenant must:

- (a) only use the Premises for the Permitted Use and not for any other use without the prior written consent of the Landlord;
- (b) unless prohibited by Law, keep the Premises open and conduct the Permitted Use during the standard trading hours of the Building (as set by the Landlord from time to time);
- (c) keep the Premises fully stocked and operate the Tenant's business during the Term with due diligence, efficiency and in a reputable manner;
- (d) keep the design and presentation of the Premises (including the frontage and window displays) to a high standard and in keeping with the standard of the Building;

- (e) at its cost, obtain and continue to hold all approvals, consents, licences and other authorisations that are required by any relevant Authority or Law to enable the Tenant to use the Premises for the Permitted Use;
- (f) comply with each order, requisition or requirement of any Authority, the Landlord's insurer(s) and every Law (whether imposed on the Landlord or the Tenant) which arises or applies because of or in connection with:
 - (i) the Tenant's use of the Premises or the nature of its business;
 - (ii) the persons who are permitted to enter the Premises;
 - (iii) any works undertaken by the Tenant or at the Tenant's request;
 - (iv) the Tenant's Property; or
 - (v) any deliberate or negligent act or omission by the Tenant or the Tenant's Associates;
- (g) comply with the reasonable requirements of the Landlord and the manufacturer in respect of any plant and equipment installed in the Premises;
- (h) comply with all drills in respect of fire or emergency, whether or not such drills involve the evacuation of the Premises;
- (i) use the Service Facilities only for the purpose for which they were designed;
- (j) use all reasonable endeavours to keep the Premises free of infectious diseases and carry out regular preventative maintenance for such purposes by properly qualified persons;
- (k) if the Tenant believes (or reasonably suspects) that there is any notifiable infectious disease in the Premises, the Tenant must promptly notify the Landlord and comply with the requirements of the Landlord; and
- (l) ensure that the Tenant and the Tenant's Associates only park their vehicles in the areas set aside by the Landlord for the purposes of parking vehicles (if any).

5.2 Negative Obligations

The Tenant must not:

- (a) discontinue its business or vacate the Premises other than in accordance with the terms of this lease;
- (b) sell, supply or offer goods or services of a kind other than goods or services usually sold, supplied or offered in the Permitted Use;
- (c) install any equipment or do anything that overloads any of the Service Facilities;
- (d) do or permit to be done anything which might negate, reduce or modify any warranty given by the manufacturer of any plant and equipment in the Premises or any insurance policy relating to it;
- (e) do or allow to be done anything which may cause loss or damage to the Premises;
- (f) hold any auction, fire or bankruptcy sale in the Premises;
- (g) store any hazardous thing on the Premises except to the extent that is necessary for the conduct of the Permitted Use and in accordance with the Law;
- (h) do or allow to be done on the Premises anything which may be a nuisance or annoyance or cause loss or damage to the Landlord or any other person;

- (i) do anything in the Premises or on the Land which involves the use of asbestos, fibreglass wool or any other harmful material;
- (j) do anything which would breach any relevant town planning scheme or zoning requirements or which would change the current zoning or permitted use of the Premises under any Law;
- (k) smoke or allow any person to smoke in any internal or enclosed part of the Building (except in any zones specifically designated by the Landlord for smoking, if any);
- (l) use the Premises as a residence;
- (m) keep or allow to be kept any animals or pets at the Premises (except as may otherwise be expressly permitted by the Permitted Use); or
- (n) use or allow the Premises to be used for any unlawful purpose.

5.3 Tenancy Mix

- (a) The Landlord makes no representation, warranty or undertaking that the Tenant has any exclusive right to carry on the Permitted Use on the Land.
- (b) The Landlord may allow other tenants or occupiers of the Land to carry on the same or similar use as the Permitted Use.

5.4 Landlord's Property

The Tenant acknowledges and agrees that:

- (a) the Landlord owns the Landlord's Property;
- (b) the Landlord has a security interest and a purchase money security interest in the Landlord's Property as the collateral under the PPSA; and
- (c) the Landlord's Property is not intended, and will not be used, for personal, household or domestic use under this lease.

5.5 Work Health and Safety

For the purposes of the WHS Laws, the Tenant:

- (a) is conducting a business or undertaking from the Premises;
- (b) has management and control of the Premises and the Tenant's Property from the date that the Tenant is first given access to the Premises and at all times during the Term; and
- (c) must comply with all relevant WHS Laws in connection with the Premises and the Tenant's Property.

5.6 Suitability of Premises

- (a) The Landlord does not warrant, expressly or impliedly, that the Premises:
 - (i) is suitable for any purpose;
 - (ii) may be used for the Permitted Use; or
 - (iii) is now or will remain suitable or adequate for all or any of the Tenant's purposes.
- (b) Except as may otherwise be expressly provided for in this lease:
 - (i) the Premises is taken by the Tenant under this lease on an 'as is' basis;

- (ii) the Tenant occupies and uses the Premises at its own risk;
- (iii) the Tenant acknowledges and declares that in entering into this lease, it has not relied on any promise, representation, undertaking or warranty given by or on behalf of the Landlord as to the suitability of the Premises or its facilities, finishes, amenities or Service Facilities for any business or undertaking to be carried on or conducted there; and
- (iv) this lease is not affected and the Landlord is not responsible or liable to the Tenant in any way if at any time:
 - (A) the Permitted Use is not permitted (or becomes prohibited) by any Law or Authority; or
 - (B) the Tenant is unable to obtain or maintain any necessary permit, licence or other approval that is required for the Permitted Use.

5.7 Access Conditions

Notwithstanding anything else in this lease to the contrary, the Tenant will not be entitled to access and use the Premises until the Tenant has first:

- (a) executed this lease;
- (b) provided at least one original executed version to the Landlord (or such other number as the Landlord requires);
- (c) paid the deposit pursuant to any offer to lease the Premises made between the Landlord and the Tenant;
- (d) paid all costs that the Tenant is required to pay under clause 32 (if any); and
- (e) provided all insurance certificates to the Landlord in accordance with this lease.

6 Care of the Premises

6.1 General obligations

The Tenant must at its own expense and at all times keep and maintain the Premises in good, clean and substantial repair and condition, excluding:

- (a) fair wear and tear; and
- (b) repairs or replacements of a structural or capital nature unless they are required because of:
 - (i) the Tenant's or the Tenant's Associates' use or occupation of the Premises;
 - (ii) any works or alterations carried out by or at the request of the Tenant; or
 - (iii) any act, omission, default or negligence of the Tenant or the Tenant's Associates.

6.2 Cleaning

The Tenant must:

- (a) keep the Premises clean and tidy and free from dirt to the satisfaction of the Landlord and each relevant Authority;

- (b) store all waste, garbage and refuse in a proper and hygienic manner in the Premises and attend to its proper disposal; and
- (c) comply with the Landlord's reasonable directions in connection with cleaning and waste disposal.

6.3 Repair or replace

The Tenant must immediately:

- (a) repair and make good any damage to the Land, Building or the Premises that is caused by the Tenant or the Tenant's Associates and where the Tenant cannot adequately repair the damaged item (as determined by the Landlord), then replace that item with a new item;
- (b) replace all broken or damaged window frames and glass in the doors, walls, windows or any other part of the Premises, irrespective of the cause of breakage or damage unless broken or damaged by the Landlord, its employees, agents or contractors; and
- (c) replace any lights (including bulbs, LEDs and fluorescent tubes) which are not working properly, with the same specification, luminosity and colour as the original.

6.4 Floors and coverings

- (a) The Tenant must:
 - (i) maintain all exposed floors and the Floor Coverings in good and clean condition;
 - (ii) not overload the floors or Floor Coverings. The Landlord may prescribe the weight limit and position of heavy articles or goods;
 - (iii) promptly make good all damage or deterioration to the floors and Floor Coverings (excluding fair wear and tear) that is caused by the Tenant or the Tenant's Associates; and
 - (iv) protect the Floor Coverings by providing protective mats, covers or devices approved by the Landlord under heavy items or equipment, under the legs and casters of chairs and furniture in the Premises and at such other places in the Premises reasonably nominated by the Landlord.
- (b) If the Tenant fails to comply with its obligations under clause 6.4(a), any damage or deterioration caused by wear and tear will not be fair wear and tear.

6.5 Refurbishment

- (a) The Landlord may require the Tenant to refurbish the Premises in accordance with this clause 6.5 by giving notice to the Tenant (**Refurbishment Notice**).
- (b) The Landlord may give a Refurbishment Notice at any of the following times:
 - (i) at such times as the Landlord may reasonably require, but not more often than once every 5 years; or
 - (ii) if the Tenant has failed to keep the Premises to a standard and condition that is consistent with the proper compliance with the Tenant's obligations under this lease, at such times as the Landlord may reasonably require.
- (c) The Refurbishment Notice may require the Tenant to carry out all or any of the following works:

- (i) Repaint all Painted Surfaces;
- (ii) replace or upgrade any part of the Shopfront, shop fittings, Tenant's Signage or lighting that has become worn, damaged or deteriorated or is no longer in keeping with the standard and quality of the Building;
- (iii) replace any Floor Coverings, window treatments and other furnishings and decorations which have become worn, damaged or deteriorated; and
- (iv) any other works consistent with these works which the Landlord nominates (acting reasonably).

6.6 Air Conditioning Plant

(a) Exclusive Air Conditioning Plant

- (i) This clause 6.6(a) applies in respect of any Air Conditioning Plant that exclusively services the Premises.
- (ii) The Tenant must keep the Air Conditioning Plant in a well maintained and hygienic condition and pay the costs of maintaining, repairing and operating it.
- (iii) The Tenant must enter into a preventative maintenance contract with a suitably qualified and experienced air conditioning maintenance contractor approved by the Landlord and must:
 - (A) pay all fees and charges under that contract in respect of routine preventative maintenance and servicing when due; and
 - (B) produce to the Landlord a copy of the preventative maintenance contract.
- (iv) Despite clause 6.6(a)(iii), the Landlord may elect to enter into service and maintenance contracts regarding the installation, removal, maintenance, repair, operation and testing of the Air Conditioning Plant at the Tenant's cost, and if the Landlord makes this election, the Tenant must pay to the Landlord on demand any amounts payable under the service and maintenance contracts.
- (v) If the Tenant owns or has installed the Air Conditioning Plant, then the Tenant is responsible for any costs of a capital nature and for the replacement of any parts of that Air Conditioning Plant which has come to the end of its serviceable life.

(b) Common Air Conditioning Plant

- (i) This clause 6.6(b) applies in respect of any Air Conditioning Plant that services the Premises as well as other premises on the Land.
- (ii) The operation of the Air Conditioning Plant remains in the control of the Landlord and the Landlord will operate it to ensure a reasonably uniform standard of air conditioning throughout those parts of the Building that are serviced by the Air Conditioning Plant.
- (iii) The Landlord must arrange and keep in force a maintenance contract with a third-party contractor for the regular servicing and maintenance of the Air Conditioning Plant, the costs of which will be paid by or recouped from the Tenant as part of the Outgoings.

- (iv) The Tenant must not in any way adjust, or interfere or tamper with, the Air Conditioning Plant unless expressly authorised by the Landlord.

6.7 Drains, Pipes and Waste

The Tenant must:

- (a) not do anything to cause any Pipes to become blocked, cracked or compromised;
- (b) immediately notify the Landlord of any cracked or leaking Pipes and use all reasonable endeavours to promptly stop any leakage;
- (c) employ licensed tradespersons to clear any blockages which may occur within Pipes; and
- (d) regularly clean any grease traps (if any) in, or exclusively servicing, the Premises.

6.8 Service Facilities

- (a) The Tenant must not use the Service Facilities for purposes other than those for which they were designed.
- (b) If the Landlord upgrades any Service Facility at the request of the Tenant or to accommodate any equipment which the Tenant wishes to install, the Tenant must pay to the Landlord, within 7 days of demand, the costs of the alterations or upgrade.
- (c) The Tenant will have no claim against the Landlord or be entitled to terminate this lease solely because:
 - (i) a Service Facility fails to operate properly; or
 - (ii) the Landlord shuts down or removes any Service Facility so as to repair, maintain or replace it or because of the provisions of any Law or the requirement of any Authority.
- (d) The Tenant must not install in the Premises anything which will or may (in the reasonable opinion of the Landlord) interfere with the performance of any Service Facility. The Tenant must immediately remove any such equipment upon request by the Landlord.
- (e) If the Tenant installs anything that covers or obstructs any Service Facility, then the Landlord may remove that cover or obstruction (including for the purposes of accessing that Service Facility under clause 11.1) and the Landlord is not responsible for making good or reinstating that cover or obstruction.

6.9 Safety and Security of the Premises

- (a) The Tenant must:
 - (i) keep the Premises (including all doors and windows) secure when the Premises is not occupied;
 - (ii) not change any of the locks without the Landlord's written consent; and
 - (iii) use its best efforts to protect the Premises from unlawful entry, theft and vandalism.
- (b) The Tenant:
 - (i) must not make any duplicate Keys unless it has obtained the Landlord's prior written approval;

- (ii) indemnifies the Landlord against all Loss for which the Landlord is, or may become, liable arising from any Key becoming lost, stolen, destroyed or damaged; and
- (iii) must return to the Landlord all Keys on the expiration or earlier determination of this lease.

6.10 Pest control

The Tenant must take reasonable precautions to keep the Premises free of rodents, vermin, animals, birds and insects (including termites and borers) and, if required by the Landlord, employ from time to time pest controllers and exterminators approved by the Landlord.

6.11 Garden maintenance

The Tenant must keep and maintain all garden and landscaping areas of the Premises (if any) in a tidy and good condition including, providing proper and regular watering and care for any grass, trees or plants on the Premises to the reasonable satisfaction of the Landlord.

6.12 Tenant to report damage and defects

The Tenant must promptly notify the Landlord of any damage to the Premises or of any defective operation of any of the Landlord's Property or the Service Facilities.

7 Alterations and Tenant's Works

7.1 Alterations to Premises

- (a) The Tenant must not:
 - (i) add to, remove from or alter any part of the Premises or the Building (including any Floor Coverings, the Service Facilities or the Landlord's Property); or
 - (ii) install any item, fixture, fitting, equipment or Floor Covering.
 unless the Tenant has obtained the prior written consent of the Landlord.
- (b) As a pre-condition to any consent, the Landlord may require the Tenant to:
 - (i) prepare and provide plans and specifications for the works for the Landlord's approval and not commence any works until the Landlord has approved those plans and specifications;
 - (ii) pay for the reasonable costs and expenses of the Landlord in supervising or inspecting the work; and
 - (iii) carry out any consequential work that may be reasonably required having regard to the work proposed by the Tenant.
- (c) If any work does not comply with the Work Standards, the Tenant must immediately carry out all required alterations, repairs or replacements so that it becomes compliant.
- (d) If required by the Landlord, the Tenant must (at the Landlord's election):
 - (i) supply and erect hoardings of a type and in the location approved by the Landlord before commencing any works and remove those hoardings once those works are complete; or

- (ii) pay the cost to the Landlord of supplying, erecting and removing those hoardings.
- (e) If:
 - (i) any work carried out by the Tenant (including any initial fitout works) requires, or results in the need for, any repair, alteration or addition to any Service Facility or any part of the Building or the Premises (as reasonably determined by the Landlord or as required by any Authority or Law); or
 - (ii) the Landlord's insurer requires any repair, alteration or addition to any Service Facility or any part of the Building or the Premises because of the Tenant's use of the Premises or the Building,
 then:
 - (iii) the Landlord may carry out those works at the Tenant's cost and the Landlord may require the Tenant to make payment of the Landlord's reasonable estimate of the cost of those works prior to the Landlord commencing the works; or
 - (iv) the Landlord may require the Tenant to carry out those works at the Tenant's cost.
- (f) The Tenant must pay for the Landlord's costs in connection with:
 - (i) engaging any architect, engineer or suitably qualified consultant to review the Tenant's plans and specifications;
 - (ii) any work carried out by the Landlord at the request of the Tenant or which is required because of any work carried out by the Tenant;
 - (iii) any work that the Tenant has not done properly; and
 - (iv) any work that is required to make the Premises or Building compliant with all relevant Laws and the requirements of each relevant Authority to the extent that any work done by the Tenant has caused the Premises or Building to not be compliant.

7.2 Work Standards

The Tenant must comply with the Work Standards when carrying out any work on the Premises or on any part of the Land (including any repair, maintenance, replacement or alteration work).

8 Signage

- (a) The Tenant must not display, place or install any Tenant's Signage on any part of the Premises, the Building or the Land unless it has first:
 - (i) obtained all necessary approvals from each relevant Authority and provided a copy of those approvals to the Landlord; and
 - (ii) obtained the Landlord's written approval (including to the design, location and content of any Tenant's Signage), which approval must not be unreasonably withheld or delayed.
- (b) The Tenant must:

- (i) install the permitted Tenant's Signage in accordance with the Work Standards;
 - (ii) maintain its Tenant's Signage in good and clean condition and repair; and
 - (iii) comply with all Laws and the requirements of each relevant Authority in respect of its Tenant's Signage.
- (c) If any Tenant's Signage erected on the exterior of the Premises with the Landlord's consent is powered or illuminated, the Tenant must:
- (i) ensure that any light illuminating the sign remains on during such times set by the Landlord from time to time; and
 - (ii) if required by the Landlord, install and connect a separate electricity meter to measure the electricity consumed by the sign.
- (d) Despite anything else in this lease to the contrary, the Landlord may grant a licence to another person to erect, install and maintain signage on any part of the Land or the Building provided that the Premises is not a standalone premises and the signage does not unreasonably interfere with the quiet enjoyment of the Premises by the Tenant.

9 Management and Control of the Land

9.1 Use of Common Areas

The Tenant may use the Common Areas but only for the purpose for which they were designed and subject to the terms of this lease.

9.2 Positive Obligations

The Tenant must:

- (a) comply with all reasonable directions from or rules made by the Landlord in relation to the use of the Common Areas; and
- (b) pay the costs of repairing and making good any damage to the Common Areas or to any other parts of the Building that is caused by or contributed to by the act or omission of the Tenant or the Tenant's Associates and must indemnify the Landlord against all Loss for which the Landlord is, or may become, liable in respect of the damage.

9.3 Negative Obligations

The Tenant must not:

- (a) do, or allow anything to be done, on the Common Areas or any other area that is unlawful;
- (b) do anything which might cause or allow the Common Areas or any other area to:
 - (i) deteriorate or become impaired except for fair wear and tear;
 - (ii) be in a condition other than a good and clean condition; or
 - (iii) be obstructed;
- (c) solicit business, or distribute or display advertising material of any nature, in the Common Areas without the Landlord's prior approval; or

- (d) leave or store anything in or on the Common Areas without the prior written consent of the Landlord.

9.4 Control

- (a) The Common Areas and all other parts of the Land (other than leased or licensed areas) are subject to the Landlord's control at all times.
- (b) The Landlord may at any time during the Term:
 - (i) construct, maintain and operate lighting, features and other facilities on the Land (including any artwork);
 - (ii) police the Common Areas;
 - (iii) exclude and restrain any person from entering upon or from using or occupying any part of the Land (other than leased or licensed areas) if in the opinion of the Landlord or the Managing Agent, their presence or behaviour:
 - (A) threatens the safety or comfort of or causes a nuisance to tenants or other visitors to the Land;
 - (B) is unlawful; or
 - (C) is likely to damage property or cause injury;
 - (iv) change the arrangement of any part of the Land (other than leased or licensed areas) and any facilities on them;
 - (v) to the extent required by the Landlord (acting reasonably), close all or any portion of the Land (other than leased or licensed areas) or facilities in them for the purpose of:
 - (A) building, reconstruction, repair or any similar purpose; or
 - (B) preventing a dedication of the area in question, or the accrual of any rights in that area, to any person or the public.

10 Car Parking

10.1 Car Parking and Access Areas

- (a) The Landlord may at any time:
 - (i) designate any part of the Car Parking and Access Areas for tenant and employee parking only and reserve any part of the Car Parking and Access Areas for customer parking only. The Tenant must comply with those designations or reservations;
 - (ii) exclude any person (including the Tenant) from using any part of the Car Parking and Access Areas;
 - (iii) enter into any arrangement or agreement with any person in connection with the supervision, management or control of parking in the Car Parking and Access Areas; and
 - (iv) impose or allow to be imposed charges for parking, including for any breach of any parking restrictions.

- (b) If any part of the Car Parking and Access Areas comprise part of the Common Area, the Tenant acknowledges and agrees that the car bays in those areas are not for the exclusive use of the Tenant and may be used by other tenants or occupiers of the Land and their invitees, visitors, customers and clients.

10.2 Tenant's obligations

The Tenant must:

- (a) only use the Car Parking and Access Areas for the purpose for which they were designed;
- (b) ensure that the Tenant's and the Tenant's Associates' vehicles are parked within the car bays and do not obstruct any of the access ways or areas;
- (c) except in the case of emergency repairs, not use the Car Parking and Access Areas for cleaning or repairing vehicles; and
- (d) not allow any vehicle, so far as it is within the Tenant's reasonable control, to drip oil or any other harmful substance on any part of the Land.

10.3 Risk and liability

- (a) The parking of motor vehicles on any part of the Land will at all times be at the risk of the Tenant.
- (b) The Landlord is not liable for any loss or damage to any personal property suffered by the Tenant or the Tenant's Associates arising out of:
 - (i) the Tenant's or the Tenant's Associates' use of the Car Parking and Access Areas; or
 - (ii) any act or omission by the Tenant or the Tenant's Associates or any act or omission by any other person, whether or not they are authorised to use the Car Parking and Access Areas.
- (c) The Tenant indemnifies the Landlord from and against all Loss (including injury to any person) to the extent that it is caused by the Tenant or the Tenant's Associates whilst using the Car Parking and Access Areas or operating any vehicle on the Land.

11 Access by the Landlord

11.1 Access

- (a) At any time during the Term, the Landlord and its contractors, employees and agents may enter the Premises to:
 - (i) view the state of repair of, and maintain or repair, the Premises or any Service Facility;
 - (ii) take photos or videos for any property condition report or any sale or leasing campaign;
 - (iii) carry out any repairs, alterations, renovations, extensions or works;
 - (iv) abate any actual or potential hazard or safety issue;
 - (v) comply with any Law;
 - (vi) remedy any breach by the Tenant of this lease; or

- (vii) do anything else which the Landlord is required by or is permitted to do under this lease.
- (b) The Landlord will give the Tenant at least 24 hours' notice before entering the Premises under this clause 11.1 (except in the case of an emergency when no notice is required).

11.2 Inspection by prospective tenants or purchasers

- (a) At all times during the Term, the Tenant must permit the Landlord and its contractors, employees and agents to:
 - (i) enter the Premises to show it to prospective purchasers; and
 - (ii) affix and exhibit any signs indicating that the Premises or the Land is available for purchase.
- (b) Within 6 months before the end of the Term, the Tenant must permit the Landlord and its employees and agents to:
 - (i) enter the Premises to show it to prospective tenants; and
 - (ii) affix and exhibit any signs indicating that the Premises is available for lease.
- (c) The Landlord will give the Tenant at least 24 hours' notice before entering the Premises under this clause 11.2.

11.3 General

- (a) The Landlord must use reasonable endeavours not to unreasonably and materially interfere with the Tenant's use or occupation of the Premises when accessing the Premises under this clause.
- (b) If the Landlord is permitted to access the Premises under this lease and the Tenant does not allow it within the required time, then the Landlord may enter the Premises by any means for the purposes of exercising its rights under this lease.

12 Risk and Insurance

12.1 Landlord's insurance

- (a) At all times during the Term, the Landlord must take out and maintain an insurance policy covering loss and damage to the Building and the Premises, resulting from fire, rain, storm and all other normal and usual risks, to their full insurable value.
- (b) The Landlord may, from time to time during the Term, take out and maintain any other policy of insurance which the Landlord reasonably considers to be necessary or desirable, including:
 - (i) a public liability insurance policy in connection with the Premises or the Land; and
 - (ii) a policy for loss of rentals and other money that is payable under this lease for any reason (including as a result of default by the Tenant).
- (c) If a claim is the result of any breach, act or omission of the Tenant or the Tenant's Associates, the Tenant is liable for and must pay for all excesses on each insurance claim made by the Landlord.

12.2 Tenant's insurance

- (a) The Tenant must at all times during the Term, take out and maintain the following policies of insurance:
- (i) a policy of public liability (and, if the Tenant manufactures or distributes products other than by retail, then also products liability) for at least \$20 million for any one occurrence and not less than \$20 million in the annual aggregate for personal injury and/or property damage arising from the acts and omissions of and the use and occupation of the Premises or the Land by the Tenant;
 - (ii) a policy insuring the Tenant's Property and any other property for which the Tenant has responsibility under this lease against loss or damage from any insurable cause whatsoever for the full replacement value;
 - (iii) an insurance policy in respect of plate glass (including all external and internal glass fixed to and forming part of the Premises and window frames) for the market value replacement cost;
 - (iv) a policy of employer's indemnity insurance including workers' compensation insurance for all of the Tenant's employees employed in, about or from the Premises;
 - (v) whenever there are works being effected on or to the Premises, a contractor's all risk policy to the full value of the works being conducted which policy may be maintained by the Tenant's contractor on behalf of the Tenant; and
 - (vi) any other insurance reasonably required by the Landlord.
- (b) The Tenant must:
- (i) pay all premiums and other money payable in respect of each insurance policy when they are due and payable;
 - (ii) provide to the Landlord a copy of each insurance policy or Certificate of Currency for each insurance policy under this clause 12.2:
 - (A) no later than 7 days before the Commencement Date;
 - (B) within 7 days after each policy is renewed; and
 - (C) on written request by the Landlord; and
 - (iii) not cancel or reduce the amount of cover of any insurance policy under this clause 12.2 without the Landlord's prior written approval (which approval the Landlord shall not unreasonably withhold).
- (c) The Tenant must ensure that each policy of insurance it must take out under this lease:
- (i) is with an independent and reputable insurer;
 - (ii) is for an amount and covers risks and contains conditions, which are reasonably acceptable to the Landlord and its insurer;
 - (iii) has no unusual exclusions unless first approved by the Landlord (acting reasonably); and

- (iv) is taken out in the name of the Tenant and noting the rights and interests of the Landlord (and those of the Landlord's mortgagee (if any)).
- (d) If any loss or damage occurs to any of the Landlord's Property or the Tenant's property which is covered by insurance effected by the Tenant, the Tenant must promptly replace, repair or reinstate the damaged or destroyed property, utilising the proceeds from the insurance.

12.3 Tenant's conduct affecting insurance

- (a) The Tenant must notify the Landlord immediately if an insurance policy required by this lease is cancelled or an event occurs which may allow a claim or affect rights under any of those policies.
- (b) The Tenant must not and must not permit anything to be done or omitted to be done which may or does:
 - (i) make any insurance required under this lease to become void or voidable; or
 - (ii) increase any premium payable.
- (c) Without limiting any other provision of this lease or any other rights of the Landlord, if the Tenant does or omits to do an act which results in the increase of any insurance premiums payable by the Landlord, the Tenant must immediately on demand pay those increased premiums.

12.4 Indemnity by Tenant

- (a) The Tenant is liable for (and indemnifies the Landlord against) all Loss for which the Landlord is, or may become, liable in connection with:
 - (i) the Tenant's use and occupation of the Premises or the Land;
 - (ii) any breach of this lease by, or act or omission of, the Tenant or the Tenant's Associates;
 - (iii) any injury to, or death of, any person on the Premises;
 - (iv) any works performed by the Tenant under this lease; or
 - (v) anything entering, leaving or affecting the Premises within the control of the Tenant.
- (b) The Tenant's liability and indemnity under clause 12.4(a) does not apply to the extent that any Loss arises out of the Landlord's negligence or breach of this lease.

13 Assignment and Sub-letting

13.1 No dealings without consent

The Tenant must not assign, transfer, grant a licence, sub-lease, part with possession of or allow anyone to use or occupy any part of the Premises or the benefit of this lease without the prior written consent of the Landlord on each occasion.

13.2 Assignment

- (a) The Landlord will not unreasonably withhold its consent to an assignment by the Tenant of the whole of the Premises and the benefit of this lease, if:

- (i) the Tenant proves to the Landlord's reasonable satisfaction that the proposed assignee:
 - (A) is respectable, solvent and of at least the same financial standing in Australia as the Tenant;
 - (B) can meet the obligations of the Tenant under this lease; and
 - (C) has business experience and skills equal to or greater than the Tenant;
- (ii) the assignment will not result in any Law applying to this lease, which does not otherwise apply and which limits the Tenant's obligations or the Landlord's rights under this lease;
- (iii) the proposed assignment does not result in a change in the Permitted Use;
- (iv) the Tenant withdraws any caveat lodged by it against the Land;
- (v) the Tenant executes and procures the assignee to execute a deed of assignment of this lease in the form required and prepared by the Landlord;
- (vi) the Rent and other payments then due or payable by the Tenant under this lease have been paid and there is no existing unremedied breach by the Tenant of the terms of this lease unless they have been waived by the Landlord; and
- (vii) if requested by the Landlord, the assignee provides or procures the provision of:
 - (A) a bank guarantee or security bond for an amount and otherwise on terms acceptable to the Landlord; and
 - (B) in the case of a corporate or trust assignee, director, shareholder or beneficiary guarantees and indemnities which are acceptable to the Landlord,

as security for the performance of the obligations to be assumed by the assignee under this lease.
- (b) If this lease is assigned with effect after a Rent Review Date and the Rent payable from that Rent Review Date has not yet been agreed or determined under this lease, then as a condition of obtaining the Landlord's consent to the assignment the Tenant must, if required by the Landlord, deposit in a trust account held by the Managing Agent as stakeholder an amount determined by the Landlord in order to provide security for any additional liability for Rent during that period.

13.3 Sub-Letting

- (a) The Landlord will not unreasonably withhold its consent to a sub-lease of part or the whole of the Premises, if:
 - (i) the Tenant proves to the reasonable satisfaction of the Landlord that the proposed sub-tenant is solvent, responsible, respectable and of sound financial standing;
 - (ii) the proposed sub-tenant will not use the Premises (or that part of the Premises to be sublet) for any use which is not a Permitted Use;

- (iii) the sub-tenant executes a sub-lease to which the Landlord is a party in a form prepared or approved by the Landlord and its solicitors, which approval will not be unreasonably withheld or delayed;
 - (iv) the sub-lease will not result in any Law applying to this lease, which does not otherwise apply and which limits the Tenant's obligations or the Landlord's rights under this lease; and
 - (v) the terms of the sub-lease include the terms of this lease as applicable and are not inconsistent with this lease.
- (b) Any rent payable under the sub-lease must not be used as evidence of market rent under this lease or otherwise, in respect of the Premises.
- (c) The Tenant indemnifies the Landlord for any Loss for which the Landlord is, or may become, liable as a result of or in connection with a sub-lease or a sub-tenant's use or occupation of the Premises.

13.4 Change in Control

- (a) In this clause 13.4, **Change in Control** means anything which results in:
- (i) more than 50% of the shares which have a right to vote at general meetings changing; or
 - (ii) more than 50% of the officeholders of the Tenant changing.
- (b) If the Tenant is a corporation the Tenant must:
- (i) provide reasonable prior notice (being not less than 20 Business Days') before any proposed Change in Control; and
 - (ii) not allow or give effect to any Change in Control before obtaining the Landlord's prior written consent.
- (c) The Landlord will not unreasonably withhold its consent to a Change in Control if:
- (i) the Tenant is not in default under this lease;
 - (ii) the Tenant proves to the Landlord's reasonable satisfaction that the Change in Control will not:
 - (A) detrimentally affect the financial position of the Tenant;
 - (B) detrimentally affect the relevant business experience and skill of the Tenant and its officers; or
 - (C) result in any diminution of the Tenant's ability to comply with the terms and conditions of this lease.
- (d) This clause 13.4 does not apply:
- (i) to any change in control of a holding company or subsidiary (as defined in the *Corporations Act 2001* (Cth)) of the Tenant; or
 - (ii) if the Tenant is a company which is listed or is wholly owned by a company which is listed on the Australian Securities Exchange.

13.5 Costs

Whether or not an assignment or sub-lease proceeds, the Tenant must pay to the Landlord, within 7 days of demand, all reasonable costs incurred by the Landlord in connection with:

- (a) arranging the assignment or sub-lease (including, if relevant, marketing and leasing fees in connection with finding any assignee or sub-tenant);
- (b) any enquiries made by or on its behalf as to the responsibility, solvency, fitness and suitability of any proposed assignee or sub-tenant;
- (c) preparing, negotiating, executing and registering any assignment deed or sub-lease deed; and
- (d) obtaining any necessary consents to the assignment or sub-lease.

13.6 Property Law Act exclusions

Sections 80 and 82 of the *Property Law Act 1969* (WA) are expressly excluded from applying to this lease.

14 Environment

- (a) In this clause 14 and this lease, **Contamination** has the same meaning as is given to the associated term 'contaminated' in section 4(1) of the *Contaminated Sites Act 2003* (WA) and the expression also includes pollution, hazardous materials and noxious or dangerous substances.
- (b) The Tenant must:
 - (i) not cause any Contamination to the Premises, the Building, the Land or any adjoining land;
 - (ii) ensure that the Tenant's Associates do not cause any Contamination to the Premises, the Building, the Land or any adjoining land;
 - (iii) not do anything which would result in any Authority issuing any notice, direction or order requiring any clean up, decontamination, remedial action or making good under any Law; and
 - (iv) use the Premises in a manner which complies with each Environmental Law.
- (c) If the Tenant or the Tenant's Associates cause any Contamination to the Premises, the Building, the Land or any adjoining land, then the Tenant must:
 - (i) immediately advise the Landlord in writing;
 - (ii) give any notice to any relevant Authority required by law;
 - (iii) fully and promptly comply with the requirements of the relevant Authority; and
 - (iv) immediately remediate the Contamination to the satisfaction of the Landlord and relevant Authority.
- (d) If the Landlord considers (acting reasonably) that the Tenant or Tenant's Associates may have caused any Contamination, the Landlord may require the Tenant to engage an accredited independent environmental consultant to test the Land for Contamination and prepare an environmental report to identify whether any Contamination exists and what is required to remediate it.
- (e) Without limiting anything else in this clause, before the end of this lease, the Tenant must decontaminate and remediate the Premises and the Land, or any adjoining

land, that is or becomes Contaminated as a result of something which the Tenant has done or failed to do.

- (f) This clause survives the termination of this lease, however occurring.

15 Option to Renew Lease

15.1 Grant of Option

The Landlord grants to the Tenant an option (or options, as the case may be) to renew this lease for each Option Term (**Option**).

15.2 Exercise of Option

- (a) The Tenant may exercise the Option to renew this lease for the next Option Term by giving a written notice to the Landlord between 6 and 3 months before the expiry date of the then current Term.
- (b) Time is of the essence in this clause.

15.3 When Option does not apply

Notwithstanding anything else in this clause 15 to the contrary, the Tenant cannot exercise an Option if:

- (a) the Tenant does not give the Landlord notice of its exercise of that Option in the manner and during the period specified in clause 15.2;
- (b) the Tenant is in breach of any of the terms or conditions of this lease at the time of giving the Option exercise notice and the Landlord has given written notice of that breach to the Tenant; or
- (c) the Tenant has committed 3 or more breaches of this lease during the then current Term and the Landlord gave written notice of those breaches to the Tenant.

15.4 New Lease after exercise of Option

If the Tenant validly exercises an Option, then:

- (a) the Landlord will grant to the Tenant a new lease for the relevant Option Term on the following terms and conditions:
 - (i) the new lease will commence and end on the commencement date and expiry date respectively of that Option Term, as specified in Item 5 (if any);
 - (ii) the commencing Rent will be determined in accordance with clause 3;
 - (iii) the Option for that Option Term will no longer apply; and
 - (iv) the terms and conditions of this lease will otherwise apply to the new lease;
- (b) the Tenant must accept that new lease;
- (c) the Tenant and each Guarantor (if any) must sign a deed prepared by the Landlord's solicitors recording the terms of the new lease, within 7 days after the Landlord has given that deed to the Tenant; and
- (d) the parties are, in any event, bound by the new lease even if that deed is not executed correctly or at all.

16 Holding Over

- (a) If the Tenant continues to occupy the Premises after the expiry of the Term (disregarding any holding over period) with the Landlord's approval, it does so as a holding over tenant in accordance with this clause 16 (**Holding Over Lease**).
- (b) The Holding Over Lease is on the same terms as this lease except that:
 - (i) the Holding Over Lease will continue until it is terminated under clause 16(c) or otherwise under this lease;
 - (ii) the Holding Over Lease is subject to any changes which the Landlord requires as a condition of giving its approval to the Holding Over Lease (if any); and
 - (iii) the Tenant does not have any option to extend or renew the Holding Over Lease.
- (c) Either the Landlord or the Tenant may terminate the Holding Over Lease by giving 1 month notice to the other.
- (d) The Rent payable during the Holding Over Lease will be as follows:
 - (i) the commencing Rent will be the same as the Rent payable immediately before the commencement of the Holding Over Lease increased by 3%; and
 - (ii) if the Holding Over Lease continues for more than one year, the Rent will be increased by 3% on each 12 month anniversary of the commencement date of the Holding Over Lease.
- (e) At the end of the Holding Over Lease, the Tenant must comply with all of the Tenant's obligations which are due to be performed on or before the expiry or sooner determination of this lease (including all of the Make Good Obligations).

17 Tenant's Obligations when Lease Ends

17.1 Vacate Premises

At the end of this lease, the Tenant must vacate the Premises and surrender all Keys to the Landlord.

17.2 Make Good Obligations

During the last 3 months of the Term or within 7 days after the sooner determination of this lease, the Tenant must:

- (a) remove all Tenant's Property;
- (b) remove all Tenant's Signage;
- (c) at the election of the Landlord, return the Premises and Service Facilities to the condition and configuration they were in (subject to fair wear and tear):
 - (i) immediately prior to the Commencement Date; or
 - (ii) if the Tenant (or a Related Party to the Tenant) occupied all or any part of the Premises under any prior lease, licence or arrangement, then in

respect of the relevant part of the Premises, immediately before the commencement of that lease, licence or arrangement;

- (d) in respect of any alterations or additions made by or at the request of the Tenant to the Premises, Building or Service Facilities, reinstate:
 - (i) the Premises, Building and Service Facilities (as the case may be) to the condition they were in before those alterations were made; and
 - (ii) make good any damage caused by the alterations or additions and their removal;
- (e) if anything has been removed from the Premises by or at the request of the Tenant (including any Floor Coverings), install new items of the same type, pattern, specification, quality and colour as the original (or such other type, pattern, specification, quality and colour as may be approved by the Landlord in its discretion);
- (f) Repaint all Painted Surfaces;
- (g) professionally and thoroughly clean the Premises, including by:
 - (i) hot water extraction, steam cleaning or high pressure water cleaning as may be required by the Landlord; and
 - (ii) remove all rubbish, debris and waste created or caused by the Tenant or the Tenant's Associates;
- (h) ensure that all Service Facilities on or within the Premises (including the Air Conditioning Plant and all power points, light switches and light fittings) are in good working order and condition (subject to fair wear and tear) and provide a report from a suitably qualified and licensed contractor to certify that they are in that condition;
- (i) replace any lights (including bulbs, LEDs and fluorescent tubes) which are not working properly, with the same specification, luminosity and colour as the original;
- (j) repair any damage to the Premises, Building or Service Facilities caused by the Tenant or the Tenant's Associates at any time, including in carrying out any Make Good Obligations; and
- (k) leave the Premises and the Service Facilities in a condition that is consistent with the proper compliance with the Tenant's obligations under this lease.

17.3 Extent and Standard of Work

- (a) The Tenant must carry out and complete the Make Good Obligations in accordance with the Work Standards.
- (b) Without being under any obligation to do so, the Landlord may direct the Tenant:
 - (i) not to perform any one or more of the Make Good Obligations; or
 - (ii) to leave in the Premises any item which the Landlord considers to be a fixture or integral to the Premises.
- (c) An obligation to 'remove' something under clause 17.2 means an obligation to remove that thing from the Premises and the Land.

17.4 Abandonment of Tenant's Property

- (a) If the Tenant does not remove any of the Tenant's Property from the Land within 7 days after the end of this lease (**Abandoned Property**), then:

- (i) the Abandoned Property is deemed to be abandoned by the Tenant;
 - (ii) the Landlord may remove, retain, store and/or sell the Abandoned Property on such terms as the Landlord thinks fit and at the Tenant's cost and risk;
 - (iii) the Landlord may apply the sale proceeds towards any unpaid money that is owing by the Tenant under this lease; and
 - (iv) the Tenant must do all things necessary to ensure that the Landlord can exercise its rights under this clause 17.4.
- (b) The Landlord is not liable in conversion or for any loss or damage in exercising its rights under this clause 17.4.
 - (c) The Landlord's rights under this clause 17.4 constitute a security interest in the Abandoned Property as the collateral under the PPSA.

17.5 Failure to comply with Make Good Obligations

- (a) The Make Good Obligations survive the expiration or sooner termination of this lease.
- (b) Without limiting any other right or remedy available to the Landlord, if the Tenant fails to comply with the Make Good Obligations by the end of this lease, then:
 - (i) the Tenant must pay to the Landlord (on demand) a daily fee equal to 1/365th of the Rent and all other money payable by the Tenant under this lease during the 12 months immediately before the date that this lease came to an end until those Make Good Obligations have been performed; and
 - (ii) the Landlord may perform all or any of those Make Good Obligations at the Tenant's expense.

18 Essential Terms

Each of the following obligations is an essential term of this lease:

- (a) the Tenant's obligation to pay Rent and all other money under this lease at the time and in the manner specified in this lease; and
- (b) the Tenant's obligations in clauses 5, 6, 7, 6.6, 8, 12.2, 12.3, 13, 14 and 17.

This clause does not prevent any other obligation under this lease being an essential term.

19 Default and Termination

19.1 Interest on overdue money

If the Tenant does not pay any money payable to the Landlord under this lease or under a judgment obtained by the Landlord against the Tenant within 7 days of the due date for payment, the Tenant must pay interest to the Landlord on the outstanding amount:

- (a) from the date the payment becomes due until the date the payment is made; and
- (b) at a rate equal to 12.00% per annum,

which interest accrues daily and is payable on written demand by the Landlord.

19.2 Landlord's right to remedy

The Landlord may remedy any default or breach by the Tenant under this lease or failure to comply with any of the Tenant's covenants or obligations.

19.3 Payment of Landlord's Costs

The Tenant must immediately pay on demand all costs and expenses incurred by the Landlord (including solicitors' costs on a full indemnity basis):

- (a) in remedying any default or breach of the Tenant;
- (b) arising from any breach of this lease by the Tenant; and
- (c) for the preparation and service of any notice required to be served under the provisions of the *Property Law Act 1969 (WA)*.

19.4 Termination

Without prejudice to any other rights the Landlord may have, the Landlord may immediately terminate this lease by:

- (a) re-entering or retaking possession of the Premises (with or without notice to the Tenant); or
- (b) giving written notice to the Tenant (with or without re-entering or re-taking possession of the Premises),

if:

- (c) the Tenant does not pay any amount of Rent or any other money under this lease within 7 days of the due date, whether or not any formal or legal demand for payment has been made;
- (d) the Tenant does not comply with any of its other obligations under this lease and that breach or non-compliance continues for 14 days after written notice is given to the Tenant by the Landlord requiring the Tenant to remedy the breach or non-compliance;
- (e) the Tenant abandons, vacates or otherwise surrenders the Premises during the Term except as required by this lease;
- (f) the Tenant repudiates this lease;
- (g) subject to any Law to the contrary (including Chapter 5 of the *Corporations Act 2001 (Cth)*), the Tenant or any Guarantor (if that Guarantor is a director or shareholder of the Tenant) is a corporation and:
 - (i) is deregistered or an order is made or a resolution passed that the corporation be wound up (except for the purpose of reconstruction or amalgamation with the written consent of the Landlord); or
 - (ii) an administrator, a liquidator, a receiver, a manager or an inspector is appointed in respect of the Tenant or any Guarantor or any of the assets of the Tenant or any Guarantor or an order is made or a meeting is called for the appointment of such a practitioner; or
- (h) the Tenant is an individual and becomes bankrupt or takes or tries to take advantage of Part X of the *Bankruptcy Act 1966 (Cth)*.

19.5 Re-Entry

For the purposes of re-entry, the Landlord or its appointed agent or servant may enter the Premises by any means to resume possession of the Premises and may expel and remove all persons, furniture and other property from the Premises without being liable for any action for trespass, assault or other proceedings for doing so.

19.6 Prior breaches

The termination of this lease does not prejudice or affect any rights or remedies of the Landlord against the Tenant or any other party for any prior breach by the Tenant or that party of any obligation under this lease.

19.7 No waiver

The acceptance by the Landlord of any late payment or part payment or arrears is not a waiver of the Tenant's obligation to pay the full Rent and other money in accordance with this lease.

19.8 Landlord may re-lease

If the Tenant abandons or vacates the Premises prior to the expiration of the Term without the Landlord's consent and without lawful excuse, the Landlord may (before terminating this lease):

- (a) seek and find an alternative tenant for the Premises and permit prospective tenants to inspect the Premises;
- (b) renovate, restore and clean the Premises;
- (c) change the locks and secure the Premises; or
- (d) accept the Keys to the Premises,

without terminating or being deemed to have terminated this lease by re-entry or otherwise or accepted a surrender of this lease and such action will not constitute forfeiture or a waiver of any of the Landlord's rights under this lease or at common law.

19.9 Entitlement to Damages

- (a) The Landlord may recover damages against the Tenant and the Tenant must compensate the Landlord for the Loss suffered by the Landlord as a result of any repudiation or breach of this lease (whether or not this lease is terminated for that breach).
- (b) The Landlord's entitlement under this clause is in addition to any other remedy or right to which the Landlord is entitled (including termination of this lease).
- (c) The Landlord's entitlement to recover damages is not affected or limited even if:
 - (i) the Tenant abandons or vacates the Premises;
 - (ii) the Landlord elects to re-enter or terminate this lease;
 - (iii) the Landlord accepts the Tenant's repudiation; or
 - (iv) the party's or parties' conduct constitutes a surrender by operation of law.

19.10 Mitigation of Damages

If the Landlord terminates this lease, the Landlord must take reasonable steps to mitigate its damages. The Landlord's conduct to mitigate damages will not by itself constitute acceptance of the Tenant's breach or repudiation or a surrender by operation of law.

20 Damage to the Premises or Building

20.1 Termination

- (a) If the Premises or the Building is damaged or destroyed after the Commencement Date so that the whole or a substantial part of the Premises is unfit for use by the Tenant then the Landlord may (in the Landlord's absolute discretion), but is not required to, reinstate the Premises and make the Premises fit for use by the Tenant.
- (b) If the Landlord does not (in the Landlord's absolute discretion) reinstate the Premises and make the Premises fit for use by the Tenant within 3 months after the damage or destruction referred to in clause 20.1(a), then either the Landlord or the Tenant may terminate this lease by written notice given to the other party given at any time before the Premises is reinstated and made fit for use by the Tenant.

20.2 Reduction of rent and other money

- (a) If the Premises or the Building is damaged or destroyed after the Commencement Date so that the whole or a substantial part of the Premises is unfit for use by the Tenant, then the Landlord will reduce the Rent and Outgoings by a reasonable amount having regard to the extent of the damage or destruction.
- (b) If the Tenant disputes the amount of the reduction under clause 20.2(a) by giving notice to the Landlord within 14 days after the reduction is applied, then:
 - (i) the reduction will be determined under clause 20.3; and
 - (ii) the Tenant must continue paying Rent and Outgoings under this lease until the amount of the reduction is determined under clause 20.3. Once the reduction is determined, an adjustment will be made for any amount overpaid.

20.3 Dispute resolution

A dispute arising under clause 20.2 as to the reduction in payments, is to be determined at the joint expense of the Landlord and the Tenant by a suitably qualified person nominated by the Chair of the API. Either the Landlord or the Tenant may ask the Chair to nominate that person. That person will act as an expert and not an arbitrator.

20.4 No Other Liability

- (a) The Landlord is not liable for any Loss suffered by the Tenant as a result of this lease being terminated under this clause 20.
- (b) Nothing in this clause 20 imposes an obligation on the Landlord to make good, repair or reinstate the Premises or the Building.

20.5 Tenant's Fault

The Tenant is not entitled to terminate this lease and is not entitled to a reduction to Rent and Outgoings under this clause 20 if:

- (a) the Landlord has not received any insurance proceeds because of any act, default or negligence of the Tenant or the Tenant's Associates; or
- (b) the damage or destruction was caused by, or substantially contributed to by, any act, default or negligence of the Tenant or the Tenant's Associates.

21 Redevelopment and Relocation

21.1 Redevelopment before the expiration of 5 years

(a) **Application of clause**

This clause 21.1 applies if:

- (i) the relevant 5 year period referred to in section 14A(1)(c) of the Retail Shops Act has not expired; and
- (ii) the Landlord wishes to redevelop the whole or any part of the Premises or the Land and:
 - (A) the Landlord reasonably requires vacant possession of the Premises to enable the redevelopment to be carried out; or
 - (B) the Landlord cannot ensure safe access to the Premises while the redevelopment is being carried out.

(b) **Terms used in this clause**

In this clause 21.1, unless the contrary intention appears:

- (i) **Landlord** means the person who is the landlord, as defined in the Retail Shops Act section 3(1), in relation to this lease;
- (ii) **new retail shop** means a redeveloped retail shop or alternative retail shop that is the subject of an offer under subclause 21.1(f)(i) or a substitute lease;
- (iii) **redevelopment**, of the retail shop, includes any substantial repair, renovation, reconstruction or demolition of the retail shop, or the Building or the retail shopping centre within which the retail shop is located;
- (iv) **retail shop** means the Premises the subject of this lease;
- (v) **retail shopping centre**, in relation to a retail shop, means the retail shopping centre as defined in the Retail Shops Act section 3(1), within which the retail shop is located;
- (vi) **substitute lease** means a lease of a new retail shop that a Landlord offers or provides under subclause 21.1(f);
- (vii) **Tenant** means the person who is the tenant, as defined in the Retail Shops Act section 3(1), in relation to this lease; and
- (viii) **termination date**, in relation to the termination of this lease under this clause, means the date set out in a termination notice for this lease referred to in subclause 21.1(d)(iii)(B).

(c) **Landlord may terminate lease to redevelop**

The Landlord may terminate this lease in accordance with this clause if the retail shop, or the building or the retail shopping centre within which the retail shop is located, is to be the subject of a redevelopment and:

- (i) the Landlord reasonably requires vacant possession of the retail shop to enable the redevelopment to be carried out; or
- (ii) the Landlord cannot ensure safe access to the retail shop while the redevelopment is being carried out.

(d) **Notice of termination for redevelopment**

- (i) The Landlord must give the Tenant written notice of termination of this lease (a termination notice) under this clause.
- (ii) A termination notice must be given at least 6 months before the termination date.
- (iii) A termination notice must contain the following:
 - (A) the details of the proposed redevelopment;
 - (B) the date on which this lease terminates (the termination date);
 - (C) notice of the Tenant's right to make a claim for compensation under subclause 21.1(h).
- (iv) The termination date does not need to coincide with the end of a rental period.

(e) **Termination of lease under this clause**

- (i) On the termination date this lease terminates.
- (ii) On termination of this lease under this clause, the Tenant is not under any obligation under this lease to make good the retail shop, despite any other clause in this lease to the contrary.

(f) **Offer by the Landlord to lease redeveloped retail shop or alternative retail shop**

- (i) At the time a termination notice is given to a Tenant, the Landlord must make an offer (the offer) to lease to the Tenant:
 - (A) the redeveloped retail shop; or
 - (B) an alternative retail shop.
- (ii) For the purposes of subclause 21.1(f)(i)(B), if the retail shop is situated in a retail shopping centre, the alternative retail shop is also to be situated in that retail shopping centre.
- (iii) If the Landlord does not offer the Tenant a substitute lease then the Landlord is liable to pay relocation costs and compensation in accordance with subclauses 21.1(g) and 21.1(h).
- (iv) The offer must be in writing.
- (v) Unless otherwise agreed between the parties, the new retail shop that the Landlord offers to lease to the Tenant under subclause 21.1(f)(i) must:
 - (A) be located in a position that has an estimated trading potential similar to that of the retail shop; and
 - (B) have a floor configuration similar to that of the retail shop; and
 - (C) have a lettable area similar to the lettable area of retail shop; and
 - (D) meet all requirements of current health, safety, building, fire and other relevant legislation for the use to which the retail shop is to be put by the Tenant.
- (vi) The offer for the lease of the new retail shop must contain the following:

- (A) details of the new retail shop;
 - (B) the date by which the Tenant must accept the Landlord's offer (which must be at least 60 days after the date of the offer);
 - (C) that the Tenant's acceptance of the offer must be in writing;
 - (D) the rent per annum for the new retail shop, which is to be no more than the rent under this lease for the retail shop;
 - (E) the terms and conditions of the lease, which are to be the same, or better, terms and conditions as this lease except that the term of the substitute lease is to be no shorter than the remainder of the term of this lease;
 - (F) the date, or estimated date, on which the lease is to commence;
 - (G) the date, or estimated date, on which the Tenant can access the retail shop to fit it out;
 - (H) a statement that the Tenant should seek independent legal and financial advice about the offer and the new retail shop.
- (vii) Without limiting subclause 21.1(f)(vi)(E), the proportion of operating expenses to be paid by the Tenant under the substitute lease must not be greater than the proportion of operating expenses to be paid by the Tenant under this lease.
- (viii) If the Tenant accepts the offer on or before the date specified under subclause 21.1(f)(vi)(B):
- (A) the Landlord must provide the Tenant with a substitute lease for the new retail shop not later than 21 days after the Tenant accepts the offer; and
 - (B) the Tenant is to execute the substitute lease and return it to the Landlord not later than 60 days after being provided with the lease by the Landlord.
- (ix) The substitute lease must be on the same terms and conditions as this lease, except that:
- (A) the commencement date for the substitute lease will be:
 - (1) such date as is agreed between the parties; or
 - (2) if a date is not agreed between the parties, 30 days after the new retail shop is made available for the Tenant to fit it out; and
 - (3) if the term of the substitute lease extends beyond the term of this lease, the dates on which the rent is reviewed or adjusted during that term or additional term will occur in the same manner as are provided for under this lease; and
 - (B) the lease is to make provision to the following effect:
 - (1) if the Landlord cannot provide the Tenant with access to the new retail shop under the substitute lease due to the redevelopment or any other unforeseen circumstance, then the Tenant may terminate the substitute lease at any

time by giving the Landlord written notice of the termination;

- (2) the Landlord has no claim against a Tenant for the termination of the lease in the circumstances set out in preceding clause (1);
- (3) the termination of the substitute lease in those circumstances is to be treated as a termination of this lease under this clause for the purposes of subclause 21.1(h).

(x) The Landlord is responsible for arranging the preparation of the substitute lease and the Landlord is to bear the following costs:

- (A) the cost of, and associated with, the preparation, and execution, of the substitute lease and any deed of surrender of this lease;
- (B) the cost of the Tenant's reasonable legal costs in relation to the termination of this lease, advice on the offer and the substitute lease and the execution of the substitute lease.

(g) **Landlord to pay Tenant's reasonable removal and relocation costs**

(i) If this lease is terminated under this clause, the Landlord is to pay the Tenant's reasonable costs of removal from the retail shop and, if relevant, the relocation of the Tenant's business to another place (whether provided under a substitute lease or not) including, but not limited to:

- (A) costs incurred by the Tenant in dismantling fittings, equipment or services; and
- (B) costs incurred by the Tenant in replacing, re installing or modifying finishes, fittings, equipment or services to the standard existing in the existing retail shop immediately before the relocation, but only to the extent that they are reasonably required in the other place; and
- (C) packaging and removal costs incurred by the Tenant.

(ii) The Landlord is to pay to the Tenant the reasonable costs of the removal and relocation in accordance with this subclause as soon as is reasonably practicable after the removal from the retail shop by the Tenant but in any event not later than 30 days after a claim for costs under this clause has been given to the Landlord by the Tenant.

(h) **Tenant's right to compensation**

(i) If this lease is terminated under this clause, or under a provision of an alternative lease referred to in subclause 21.1(f)(ix)(B), the Landlord is liable to pay the Tenant reasonable compensation for loss and damage (including loss of goodwill) suffered by the Tenant due to the termination of this lease, taking into account all relevant factors.

(ii) Despite subclause 21.1(h)(i), the Landlord is only liable to pay the written down value of the costs of fitting out the retail shop as at the termination date, calculated in accordance with the current method used by the Australian Taxation Office for the depreciation of assets.

- (iii) The Tenant must give the Landlord written notice of the loss or damage as soon as reasonably practicable after it is suffered but a failure to do so does not affect any right of the Tenant to compensation.
- (iv) Subclause 21.1(h)(i) applies whether or not:
 - (A) the Landlord offers the Tenant a substitute lease; or
 - (B) the Tenant accepts an offer of a substitute lease; or
 - (C) a substitute lease is entered into by the parties; or
 - (D) the terms of a substitute lease entered into are not complied with; or
 - (E) a substitute lease is terminated in accordance with a provision of that lease referred to in subclause 21.1(f)(ix)(B).
- (v) The Landlord is to pay to the Tenant compensation in accordance with this subclause as soon as is reasonably practicable after the termination date, but in any event not later than 30 days after a claim for compensation under this clause has been given to the Landlord by the Tenant.

(i) **Abatement of rent**

- (i) The Landlord must allow the Tenant an abatement of rent, and other occupancy costs, for any period of time during which the Tenant cannot reasonably carry on the Tenant's business in the new retail shop after the termination date of this lease:
 - (A) because the Tenant needs to fit out the new retail shop and to relocate the Tenant's fixtures, fittings, furnishings, plant and equipment and stock in trade from the retail shop to the new retail shop; or
 - (B) because the Landlord had not provided the Tenant with access to the new retail shop; or
 - (C) because of any other actions of the Landlord.
- (ii) Subclause 21.1(i)(i)(A) does not apply to any period of time where there is unreasonable delay in fitting out the new retail shop and installing the fixtures, fittings, furnishings, plant and equipment, and stock in trade in the new retail shop, unless the delay is outside of the control of the Tenant.

(j) **Dispute resolution**

Any question between the Landlord and the Tenant arising under this lease may be referred to the State Administrative Tribunal, or made the subject of a request to the Small Business Commissioner, where relevant, in accordance with the Retail Shops Act.

21.2 Redevelopment after the expiration of 5 years

(a) **Terms used in this clause**

In this clause 21.2, **redevelopment** includes any substantial repair, renovation, reconstruction or demolition of the Premises or the Land and **redevelop** has a corresponding meaning.

(b) **Application of clause**

This clause 21.2 applies if:

- (i) the relevant 5 year period referred to in section 14A(1)(c) of the Retail Shops Act has expired; and
- (ii) the Landlord wishes to redevelop the whole or any part of the Premises or the Land and:
 - (A) the Landlord reasonably requires vacant possession of the Premises to enable the redevelopment to be carried out; or
 - (B) the Landlord cannot ensure safe access to the Premises while the redevelopment is being carried out.

(c) **Redevelopment**

- (i) The Landlord may terminate this lease under this clause by giving the Tenant not less than 6 months prior notice in writing (**termination notice**). The termination notice must specify the date on which this lease terminates (**termination date**), which does not need to coincide with the end of a Rent period.
- (ii) This lease terminates on the termination date, at which time the Tenant and the Tenant's Associates must deliver up vacant possession of the Premises to the Landlord in accordance with the terms of this lease (including clause 17).
- (iii) The Tenant remains liable for the payment of the Rent and all other amounts payable under this lease and for the performance and observance of the Tenant's obligations under this lease up to the termination date or, in respect of those covenants which survive the termination of this lease, until those covenants have been fulfilled.
- (iv) If the Landlord wishes to relocate the Tenant's business, the Landlord must give the Tenant written notice of relocation (**relocation notice**) at the same time as the termination notice is given.
- (v) The relocation notice must give details of an alternative retail shop (**alternative shop**) to be made available to the Tenant by the Landlord.
- (vi) If a relocation notice is given, the Landlord must offer the Tenant a new lease of the alternative shop (**new lease**). That offer must contain the following:
 - (A) the rent for the alternative shop, which must be no more than the Rent payable for the Premises under this lease, adjusted to take into account any difference in the commercial values of the Premises and the alternative shop at the time of relocation;
 - (B) the terms and conditions of the lease, which are to be the same, or better, terms and conditions as this lease except that the term of the new lease is to be no shorter than the remainder of the Term of this lease;
 - (C) the date by which the Tenant must accept the Landlord's offer (which must be at least 30 days after the date of the offer); and
 - (D) that the Tenant's acceptance of the offer must be in writing.

- (vii) If the Tenant accepts the offer on or before the date specified under clause 21.2(c)(vi)(C):
- (A) the Landlord must provide the Tenant with the new lease not later than 30 days after the Tenant accepts the offer;
 - (B) the Tenant must execute the new lease and return it to the Landlord not later than 30 days after being provided with the lease by the Landlord;
 - (C) the Landlord is responsible for arranging the preparation of the new lease and must pay the costs of the Landlord's solicitors of the instructions for and the preparation and execution of the new lease; and
 - (D) the Landlord must pay the Tenant's reasonable costs of the relocation, including but not limited to:
 - (1) costs incurred by the Tenant in dismantling fittings, equipment or services at the Premises;
 - (2) costs incurred by the Tenant in replacing, re-installing or modifying finishes, fittings, equipment or services to the standard existing in the Premises immediately before the relocation, but only to the extent that they are reasonably required in the alternative shop;
 - (3) packaging and removal costs incurred by the Tenant; and
 - (4) legal costs incurred by the Tenant.
- (viii) If the Landlord does not offer the Tenant a new lease of an alternative retail shop then the Landlord is liable to pay to the Tenant such reasonable compensation as is agreed in writing between the parties or determined by the State Administrative Tribunal.

22 Strata Lot

22.1 Application of Strata Lot Provisions

This clause 22 applies if at any time the Premises comprise the whole or part of the land contained in a Strata Plan.

22.2 Definitions

In this lease:

- (a) **By-Laws** means the by-laws as adopted by the Strata Company or by virtue of the Strata Titles Act and includes any amendments to them;
- (b) **Strata Common Property** means the common property comprised in the Strata Plan;
- (c) **Strata Company** means the body corporate created on the registration of the Strata Plan;
- (d) **Strata Plan** means (as the context requires):
 - (i) the registered strata plan, which the Premises forms part of; or

- (ii) any strata plan which is registered in respect of the Land under the Strata Titles Act;
- (e) **Strata Titles Act** means the *Strata Titles Act 1985* (WA); and
- (f) unless otherwise defined in this lease, words and expressions defined in the Strata Titles Act have the same meaning when used in this lease.

22.3 Strata Company and Strata Titles Act

The parties acknowledge and agree that:

- (a) this lease and the Tenant's interest in the Premises is subject to all easements, rights, reservations and powers mentioned in the Strata Titles Act and shown on the Strata Plan;
- (b) if the Tenant requires the Landlord's consent or approval before doing any act or thing, the Tenant must also obtain the consent and approval of the Strata Company before doing that act or thing to the extent that it is required under the By-Laws or otherwise by the Strata Company or the Landlord;
- (c) the purpose of any reserve fund or sinking fund established by the Strata Company is the purpose described in the By-Laws or, if there is no purpose described therein, then the purpose described in section 100(2) of the Strata Titles Act;
- (d) this lease is not affected by any order made by the District Court under Part III of the Strata Titles Act varying the Strata Plan or substituting a new strata scheme for or terminating the Strata Plan; and
- (e) despite anything in this lease to the contrary:
 - (i) the Tenant has no rights or claim against the Landlord in relation to the exercise by the Strata Company of any of its rights, duties or powers under the Strata Titles Act and the By-Laws of the Strata Company; and
 - (ii) the Landlord shall be relieved of any obligation imposed by this lease to the extent that the obligation must be performed either by the Strata Company or with the approval of the Strata Company and the Strata Company fails to perform that obligation or fails to give its approval.

22.4 Tenant's right to use Strata Common Property

The Tenant and the Tenant's Associates may use the Strata Common Property in common with the Landlord and the registered proprietors of all of the other strata lots comprised in the Strata Plan and their respective assigns, servants, employees, tenants, occupiers and invitees, subject to the By-Laws and to all rules and regulations made by the Strata Company.

22.5 By-Laws and regulations

- (a) The Tenant acknowledges and agrees that it has received, read and understood the By-Laws prior to execution of this lease.
- (b) The Tenant must comply with all By-Laws and with all rules and regulations made by the Strata Company under its by-laws and the provisions of the Strata Titles Act.
- (c) The Tenant acknowledges that the Strata Company may at any time make, amend, cancel, add to or suspend or substitute any By-Laws.
- (d) A failure of the Tenant to perform and observe the By-Laws, constitutes a breach of the terms of this lease.

22.6 Interpretation

Where the context permits or requires, references to the Landlord under this lease will include the Strata Company.

22.7 Insurance policies

If the Strata Company has taken out and is maintaining any policy of insurance specified in this lease, then the Landlord may elect not to take out and maintain that policy of insurance. Nothing in this clause relieves the Tenant from its obligation to pay all costs and expenses incurred in taking out and maintaining the policies of insurance referred to in this lease.

23 Dealing with the Land

23.1 Change of Ownership

If any person who is the Landlord under this lease ceases to be the registered proprietor of the Premises, then from the date that occurs:

- (a) that person is released from its obligations under this lease; and
- (b) the registered proprietor(s) of the Premises following the relevant transfer, becomes the Landlord under this lease instead.

23.2 Future Dealings

- (a) The Landlord may at any time during the Term:
 - (i) amalgamate any lots comprising the Land or amalgamate all or part of the Land with any other land;
 - (ii) subdivide all or any part of the Land; or
 - (iii) dedicate any part of the Land or grant or create or take the benefit of any Encumbrance in respect of any part of the Land, including for the purposes of:
 - (A) allowing any public or private access to, on or from any part of the Land or Building;
 - (B) rectifying any encroachment; or
 - (C) the support of any structures or Service Facilities (whether present or future).
- (b) If the Landlord wishes to do anything under clause 23.2(a):
 - (i) the Tenant must, if requested by the Landlord and at the Landlord's cost:
 - (A) sign all documents that are necessary to enable the Landlord to carry out the relevant dealing;
 - (B) withdraw any Encumbrance it has lodged (if any) to enable the Landlord to carry out the relevant dealing; and
 - (ii) the Landlord may amend this lease to ensure that, to the extent that it is possible, the rights and obligations of the parties under this lease are maintained.
- (c) The Landlord must not do anything under clause 23.2(a) which:

- (i) materially and permanently derogates from any rights granted to the Tenant under this Lease; or
- (ii) materially adversely affects the Tenant's access to or use of the Premises for the Permitted Use.

23.3 Alterations and Additions

- (a) The Landlord may at any time:
 - (i) renovate, construct, add to, re-model, resume, relocate, reduce, vary, extend, modify or redesign any part of the Building (other than the internal parts of the Premises);
 - (ii) build additional storeys on any Building;
 - (iii) alter, modify, resume, relocate, add to, increase or decrease the size of, or alter the configuration of the Land or any Common Areas;
 - (iv) construct additional buildings or improvements on the Land; and
 - (v) change the area, level, location, entries, exits and arrangements of the Car Parking and Access Areas including constructing multi deck parking facilities.
- (b) In exercising the Landlord's rights under this clause 23.3, the Landlord will:
 - (i) comply with all relevant Laws; and
 - (ii) use reasonable endeavours to minimise disruption to the Tenant as far as is reasonably practical in the circumstances.

24 PPSA

24.1 PPSA definitions

Unless otherwise defined in this lease, words and expressions defined in the PPSA have the same meaning when used in this clause 24.

24.2 Application of clause to security interests

In relation to each security interest under the PPSA created by this lease:

- (a) this clause 24 applies to that security interest;
- (b) the security interest extends to any accessions to the relevant collateral and the proceeds, if any, of that collateral (including any account); and
- (c) this lease is a security agreement under the PPSA in relation to that security interest.

24.3 Acknowledgements

- (a) In relation to each security interest created by this lease:
 - (i) the security interest attaches to the relevant collateral from the date of this lease and there is no agreement to defer attachment to a later time than as specified above;
 - (ii) the Landlord may register any financing statement, financing change statement or other documents and do all other things which are necessary or desirable to perfect and maintain the Landlord's security interest under

this lease, to preserve its interest in the relevant collateral and to realise the Landlord's security interest with the agreed priority;

- (iii) the Tenant must pay all fees and expenses (including legal fees) incurred by the Landlord in doing any of the things referred to in clause 24.3(a)(ii) on demand; and
 - (iv) nothing in this clause 24 or this lease obliges the Landlord to register, perfect or maintain any security interest created by this lease and any failure or delay by the Landlord to do so does not in any way affect or limit the obligations of any other party under this lease.
- (b) The parties agree that the Tenant's Property and any partitions, equipment, facilities, fixtures, fittings brought onto the Premises by any predecessor of the Tenant which are not required by the Landlord to be removed by the Tenant before vacating the Premises in accordance with this lease are deemed to be fixtures for the purposes of the PPSA.

24.4 PPSA obligations and third party information

- (a) The Tenant must execute any documents and provide all relevant information and full cooperation to the Landlord to ensure the Landlord has a perfected security interest in the relevant collateral under the PPSA.
- (b) The Tenant must not sell, transfer, lease, encumber, part with possession of or otherwise deal with any of its rights and interest in the relevant collateral or any part of it without the prior written consent of the Landlord.
- (c) The Tenant must (within two Business Days) notify the Landlord in writing of any change to:
 - (i) the Tenant's name;
 - (ii) the Tenant's trading name;
 - (iii) the Tenant's contact details (including its address); or
 - (iv) where the Tenant has entered into this lease as trustee of any Trust, the ABN of that Trust (including any new ABN allocated to the Trust where the Trust was not allocated an ABN as at the date of this lease).
- (d) The Tenant appoints the Landlord (and if the Landlord is a corporation, each officer of the Landlord for the time being) as its agent and authorised representative for the purpose of requesting information from other secured parties under section 275 of the PPSA.

24.5 Waivers and PPSA provisions not applicable

- (a) The Tenant waives its rights to receive any notice under the PPSA (including a copy of any verification statement) unless the notice is required by the PPSA and that requirement cannot be excluded.
- (b) Where the Landlord has rights in addition to those in Chapter 4 of the PPSA, those rights continue to apply.
- (c) Sections 95, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA are excluded to the fullest extent permitted by section 115 of the PPSA.

25 Notices

25.1 Requirement for writing

A notice, demand, consent or other communication (a **Notice**) given or made under this lease must be:

- (a) in writing; and
- (b) signed by the sender or a person duly authorised by the sender (or in the case of email, set out the full name and position or title of the sender or person duly authorised by the sender).

25.2 Serving notices

A Notice given or made under this lease must be delivered to the intended recipient by:

- (a) hand (including by courier) to the address specified in Item 9 or the address last notified by the intended recipient to the sender;
- (b) post to the address specified in Item 9 or the address last notified by the intended recipient to the sender; or
- (c) email to the email address (if any) specified in Item 9 or the email address last notified by the intended recipient to the sender.

25.3 When effective

- (a) Subject to clause 25.3(b), a Notice will be taken to be duly given or made:
 - (i) in the case of delivery by hand (including by courier), when given to the intended recipient or left at the address specified in Item 9 or the address last notified by the intended recipient to the sender;
 - (ii) in the case of delivery by post, two Business Days after the date of posting; and
 - (iii) in the case of email, at the earliest of:
 - (A) the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email;
 - (B) the time that the intended recipient confirms receipt of the email by reply email; and
 - (C) the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within the next 3 hour period, an automated message that the email has not been delivered.
- (b) If, under clause 25.3(a), a Notice would be taken to be given or made on a day that is not a business day in the place to which a Notice is sent or at later than 5.00pm (in the place that a Notice is sent to), it will be taken to have been duly given or made at the start of business on the next business day in that place.

26 Trustee Covenants

If a party (other than the Landlord) enters into this lease as a trustee of a trust (**Trustee**) whether or not the trust is disclosed in this lease (**Trust**), that party covenants with and warrants to the Landlord that:

- (a) the Trustee has full power and authority to enter into this lease;
- (b) the Trustee has obtained all consents and approvals necessary to execute this lease so as to bind the property of the Trust;
- (c) the Trustee enters into this lease and is bound by the terms and conditions in this lease both in its own right personally and in its capacity as trustee;
- (d) the assets of the Trust and the personal assets of the party will, at all times, be available to satisfy the obligations of the Tenant under this lease;
- (e) the Trustee is the sole trustee of the Trust;
- (f) the Trustee will not cease to be the trustee of the Trust unless it complies with clause 13 and the new trustee enters into a deed referred to in clause 13.2(a)(v);
- (g) the Trust will remain in force and will not be varied or vested during the Term; and
- (h) the Trustee will not do any act or thing or omit to do any act or thing so as to harm or impair or be likely to harm this lease or the covenants, terms and conditions of it.

27 Limitation on Landlord's Liability

27.1 General Limitation

- (a) The Landlord is not liable for any:
 - (i) loss or damage suffered by any person;
 - (ii) injury to, or death of, any person; or
 - (iii) loss or damage of any property, including the Tenant's Property, however occurring unless caused by the wilful act, negligence or default of the Landlord.
- (b) The Landlord is not liable for any Loss suffered by the Tenant from any malfunction, failure to function or interruption of or to any of the Service Facilities or equipment contained in or provided to the Premises however occurring unless caused by the wilful act, negligence or default of the Landlord.

27.2 Landlord as trustee

If the Landlord has entered into this lease as trustee of a trust, then:

- (a) the Landlord has done so in no other capacity;
- (b) the Landlord is not liable personally to the Tenant for any breach of the Landlord's obligations under or implied by this lease;
- (c) no officer of the Landlord is liable personally to the Tenant;
- (d) in respect of any breach by, or liability of, the Landlord under this deed or lease, the Tenant is only able to claim any Loss from the Landlord to the extent that the Landlord is able to be (and is) reimbursed from the net assets of that trust; and

- (e) the Tenant must not seek the appointment of an administrator, liquidator, receiver or similar person to the Landlord personally or prove in any administration, liquidation or other arrangement of or affecting the Landlord personally.

28 Retail Shops Act

28.1 Application to Lease

If the Retail Shops Act applies to this lease:

- (a) the provisions of this lease will be subject to the provisions of the Retail Shops Act; and
- (b) to the extent that any provision of this lease is void, contrary to or inconsistent with anything in the Retail Shops Act:
 - (i) the Retail Shops Act prevails; and
 - (ii) that provision must be read down only to such an extent as is necessary to give that provision valid operation and so as not to prejudice to the other provisions of this lease, which will continue in full force and effect.

28.2 Disclosure statement acknowledgment

If the Retail Shops Act applies to this lease, the Tenant acknowledges having received, at least 7 days before entering into this lease, a disclosure statement in the form and containing the information and documents prescribed by the Retail Shops Act.

28.3 State Administrative Tribunal Approval

- (a) If any part of this lease requires the approval of the State Administrative Tribunal (SAT) then, if requested by the Landlord:
 - (i) the Tenant must provide its consent to, and sign, the Landlord's application for approval; and
 - (ii) if the Retail Shops Act requires the Tenant to make the application, the Tenant must promptly make that application in a form that is first approved by the Landlord.
- (b) If the SAT refuses the application or approves the application in part only then the Tenant must, if required by the Landlord:
 - (i) join with the Landlord in making a subsequent application for approval to include a substituted clause in this lease on terms which are satisfactory to the Landlord and the Tenant; and
 - (ii) execute all such further documents as may be required to give effect to the approved substituted clause.
- (c) If the SAT approves an application subject to a condition that this lease is varied, then the Landlord may (in its discretion) give written notice to the Tenant advising that it accepts the condition. If the Landlord does so, then this lease is deemed to be varied to the extent necessary to satisfy the condition(s) which the Landlord has accepted.

29 Encumbrances

29.1 Encumbrances

- (a) This lease is subject to any Encumbrances affecting the Land or Premises, including any Encumbrance created under clause 23.2(a).
- (b) The Tenant must not do anything which would cause the Landlord to be in breach of any Encumbrance affecting the Land.

29.2 Tenant Not to Encumber Leasehold Interest

Except with the Landlord's prior written consent, the Tenant must not mortgage, charge or otherwise encumber the Tenant's interest under this lease or any part of it.

29.3 No Absolute Caveat to be Lodged

- (a) Neither the Tenant nor any agent or other person on behalf of the Tenant may lodge a caveat against the Land other than a subject to claim caveat to protect the Tenant's interests under this lease.
- (b) The Tenant must withdraw any caveat it has lodged against the Land immediately upon this lease ending.

29.4 Removal by Power of Attorney

- (a) The Tenant for valuable consideration irrevocably appoints the Landlord and (if the Landlord is a company) every director and secretary of the Landlord (jointly and severally) to be the Tenant's attorney to:
 - (i) withdraw any caveat which the Tenant is required to withdraw but fails to do so; and
 - (ii) complete, execute and register a surrender of this lease at Landgate after this lease ends.
- (b) The Tenant hereby irrevocably ratifies all that the attorney does or causes to be done under this clause.

30 GST

- (a) In this clause:
 - (i) **GST** has the same meaning as in the GST Act and includes any replacement or subsequent similar tax;
 - (ii) **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and
 - (iii) all terms which are defined in the GST Act have the same meaning as they are given by the GST Act when they are used in this clause.
- (b) Unless otherwise expressly provided in this lease, the Rent and any other consideration or money payable by the Tenant under this lease is expressed as a GST exclusive amount.
- (c) If the Landlord pays or is liable to pay any GST on the Rent or any other taxable supply made in respect of or in connection with this lease, then the Tenant must pay

to the Landlord the amount of that GST at the same time the payment for the taxable supply is due under this lease.

- (d) The Tenant indemnifies the Landlord for the amount of any GST the Landlord pays or is liable to pay on a taxable supply made in respect of or in connection with this lease.
- (e) The Landlord must issue a tax invoice to the Tenant in respect of a taxable supply as and when required by the GST Act.
- (f) The amount for GST payable by the Tenant under this clause will be reduced by the amount of any input tax credit in relation to that amount which the Landlord has received or claims and is entitled to receive.

31 Foreign Investment Approval

The Tenant (and each Guarantor, if any) each continually warrant and represent that:

- (a) the Tenant is not a 'foreign person' for the purposes of the *Foreign Acquisitions and Takeovers Act 1975* (Cth) (**FAT Act**); and
- (b) the Tenant does not require the Treasurer's approval to enter into this lease under the FAT Act.

32 Costs

- (a) The parties must each pay their own costs in preparing, negotiating and executing this lease.
- (b) The Tenant must pay to the Landlord on demand the Landlord's reasonable costs and disbursements (including legal costs) in connection with:
 - (i) any assignment or subletting; and
 - (ii) any consent sought from the Landlord under this lease.
- (c) The Tenant must pay for any duty assessed on this lease.
- (d) Anything the Tenant must do under this lease must be done at the Tenant's cost, unless this lease expressly provides otherwise.

33 Special Conditions

The terms and conditions set out in Item 10 (if any) (**Special Conditions**) are incorporated into this lease and if there is any inconsistency between the Special Conditions and the other terms and condition of this lease, then the Special Conditions prevail to the extent of that inconsistency.

34 General

34.1 Registration

- (a) If the Landlord wishes to register this lease at Landgate, then:

- (i) the Tenant must sign such documents as may be necessary to enable this lease to be registered at Landgate (including any Landgate L1 Form); and
 - (ii) the Landlord may amend, replace or supplement the Premises Plan in this lease to comply with the requirements of Landgate.
- (b) The Tenant must pay for the Landlord's reasonable costs in connection with registration of this lease (including Landgate's registration and production fees and any survey costs).
- (c) If this lease is registered at Landgate, the Tenant must also execute and lodge a surrender of the registered lease with Landgate within 14 days after this lease ends.

34.2 Confidential Information

- (a) For the purposes of this clause 34.2 **Confidential Information** means:
- (i) the terms of this lease;
 - (ii) the amount of money payable by the Tenant;
 - (iii) any incentives granted by the Landlord to the Tenant at any time; and
 - (iv) information designated by the Landlord as being confidential.
- (b) The Tenant must not disclose any Confidential Information, directly or indirectly to any person except:
- (i) to the extent that the Confidential Information is in the public domain, including if this lease is registered at Landgate;
 - (ii) in connection with an exercise of rights or a dealing with rights or obligations under this lease;
 - (iii) to its legal and other advisers and auditors; or
 - (iv) as required by any Law or any stock exchange.

34.3 Landlord's consents and approvals

- (a) Except as otherwise provided in this lease, any consent or approval which may be granted by the Landlord under this lease may be granted, refused or given subject to conditions, in the absolute discretion of the Landlord.
- (b) If the Tenant requests the consent of the Landlord, the Tenant must pay to the Landlord all costs and expenses reasonably incurred by the Landlord (including legal costs) in considering that request, whether or not the consent is granted.

34.4 Landlord may act by agent

All acts and things which the Landlord is required or able to do under this lease may be done by the Landlord or any solicitor, agent, contractor or employee of the Landlord, including the Managing Agent.

34.5 Statutory powers add to express powers

Unless inconsistent with the provisions of this lease, the powers conferred on the Landlord under any statute are in addition to the powers conferred on the Landlord by this lease.

34.6 Execution by Attorney

Each person who executes this deed on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstances that might affect his or her authority to do so.

34.7 No waiver

- (a) A failure to exercise or a delay in exercising any right, power or remedy under this lease does not operate as a waiver.
- (b) No consent or waiver expressed or implied by the Landlord to or in respect of any breach of the Tenant's obligations under this lease is to be construed as a consent to or waiver of any other breach of that obligation or any other term contained or implied in this lease.
- (c) A waiver is not valid or binding on the Landlord unless it is made in writing.

34.8 No merger

The terms and conditions of this lease or anything done under or in connection with this lease or any other agreement between the Landlord and Tenant will not operate as a merger of any of the rights and remedies of the parties in or under this lease, or in or under any other agreement, all of which will continue in full force and effect.

34.9 Severance

If any provision of this lease or its application to any person or circumstance is or becomes invalid or unenforceable, that provision will be taken to be omitted without invalidating or modifying the remaining provisions of this lease, which will continue in full force and effect as if the invalid or unenforceable provision had not been included in it.

34.10 Survival of covenants

The Tenant's obligation to observe and perform the Tenant's covenants and obligations under this lease will survive the expiry or earlier termination of this lease.

34.11 No Moratorium

Unless application is compulsory by Law, no statute, ordinance, proclamation, order, regulation or moratorium present or future applies to this lease so as to prejudicially affect any rights, powers, remedies or discretions given to the Landlord.

34.12 Indemnities

Each indemnity in this lease is independent from the Tenant's other obligations and continues during this lease and after this lease ends. The Landlord may enforce an indemnity before incurring expense.

34.13 Entire agreement

This lease covers the whole of the agreement between the parties and no further or other covenants or provisions, whether in respect of the Premises or otherwise, will be considered to be implied or to arise between the parties by way of any collateral or other agreement.

34.14 Execution by counterparts

- (a) This lease may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

- (b) A party may execute this lease or any counterpart and exchange it by fax or as an electronic copy by email.

34.15 Governing law

This lease will be construed in accordance with and governed by the Law of Western Australia. Each party submits to the non-exclusive jurisdiction of its courts.

Draft

Schedule – Lease Details

1 Premises *(clause 1.1(gg))*

That part of the Land and the Building located at and known as Part of 248 Gloucester Street, East Victoria Park WA 6101 comprising an area of approximately 24m² and being the premises shaded yellow on the Premises Plan.

2 Land *(clause 1.1(r))*

(a) Lot 25 on Plan 3844 being the whole of the land in Certificate of Title Volume 728 Folio 16.

(b) Lot 1 on Diagram 7170 being the whole of the land in Certificate of Title Volume 928 Folio 154.

(c) Lot 2 on Diagram 7170 being the whole of the land in Certificate of Title Volume 1243 Folio 266.

(d) Lot 3 on Diagram 7170 being the whole of the land in Certificate of Title Volume 920 Folio 171.

(e) Lot 4 on Diagram 6670 being the whole of the land in Certificate of Title Volume 1012 Folio 455.

(f) Lot 3 on Diagram 6670 being the whole of the land in Certificate of Title Volume 1014 Folio 412.

(g) Lot 3 on Diagram 8413 being the whole of the land in Certificate of Title Volume 1397 Folio 245.

(h) Lot 2 on Diagram 8413 being the whole of the land in Certificate of Title Volume 1045 Folio 168.

(i) Lot 1 on Diagram 8413 being the whole of the land in Certificate of Title Volume 1045 Folio 167.

(j) Lot 12 on Diagram 5825 being the whole of the land in Certificate of Title Volume 1436 Folio 581.

~~(a)~~

3 Landlord's Property *(clause 1.1(u))*

Any floor or window coverings, partitions, light fittings and other fixtures or fittings installed by the Landlord in the Premises and any replacement of those items.

4 Term *(clause 1.1(xx))*

- (a) Period: 2-5 years
- (b) Commencement Date:
- (c) Expiry date:

5 Options *(clause 15)*

(a) The first Option Term

Period: ~~.....~~ 2 years ~~Not any.~~

Commencement date:

Expiry date:

(b) **The second Option Term**

Period: ~~.....~~ 1 year ~~Not any.~~

Commencement date:

Expiry date:

(c) **The third Option Term**

Not applicable

6 Rent (clause 3.1)

- (a) Annual rent: \$4,200.00 plus GST
- (b) Instalments payable: \$350.00 plus GST
- (c) Rent Commencement Date: the Commencement Date
- (d) Payment dates: Instalments are payable monthly in advance on the first day of each calendar month.
The first instalment must be paid on the Rent Commencement Date.
If the Rent Commencement Date is not the first day of a month, the first and last Rent instalments during the Term will be proportionate.

7 Rent Review Dates (clause 3.2)

- (a) **CPI Rent Review Dates**
On each 12 month anniversary after the Commencement Date during the Term ~~and each Option Term.~~

8 Permitted Use of the Premises (clause 1.1(dd))

Cafe.

9 Contact Details (clause 25.2)

- (a) **Landlord**
Address: 99 Shepperton Road, Victoria Park WA 6100
Email: admin@vicpark.wa.gov.au
- (b) **Tenant**
Address: care of the Leisurelife Centre, 34 Kent Street, East Victoria Park WA 6101
Email: ryan@perthredbacks.asn.au

10 Special Conditions *(clause 33)*

10.1 Commencement Date

Once the Commencement Date is known, the Tenant irrevocably authorises and directs the Landlord or its Managing Agent to:

- (a) insert the relevant dates into Items 4 and 5 by hand; or
- (b) replace the relevant pages of this lease with new pages containing those dates.

10.2 Tenant's First Right to Terminate

- (a) In this Item 10.2:
 - (i) Termination Date means the date that is the second anniversary of the Commencement Date;
 - (ii) Termination Notice means a notice terminating this lease given by the Tenant in accordance with Item 10.2(b); and
 - (iii) Termination Notice Period means the period commencing on the Commencement Date and ending on the date being 30 days prior to the second anniversary of the Commencement Date (inclusive).
- (b) Despite anything to the contrary contained or implied in this lease, the Tenant may terminate this lease by giving a written notice of termination to the Landlord during the Termination Notice Period (time being of the essence).
- (c) If the Tenant gives a Termination Notice during the Termination Notice Period:
 - (i) this lease will come to an end on the Termination Date;
 - (ii) the Tenant must comply with all of its obligations under this lease up to the Termination Date; and
 - (iii) the Tenant must comply with all of the Make Good Obligations before the Termination Date.
- (d) Nothing in this Item 10.2 will:
 - (i) prejudice or affect any claim or demand which the Landlord may now or but for the termination have had against the Tenant for or in respect of any breach of the Tenant's covenants under this lease prior to the Termination Date; or
 - (ii) constitute or be treated as a waiver by the Landlord of any past breach of the Tenant's covenants under this lease by the Tenant.
- (e) If the Tenant does not give a Termination Notice during the Termination Notice Period, then the Tenant is no longer able to terminate this lease under this Item 10.2.
- (f) The Tenant's right to terminate under this Item 10.2 only applies whilst the Tenant is Perth Basketball Association Inc ABN 40 948 669 807.

10.3 Tenant's Second Right to Terminate

- (a) In this Item 10.3:
 - (i) Termination Date means the date that is the fourth anniversary of the Commencement Date;

- (ii) Termination Notice means a notice terminating this lease given by the Tenant in accordance with Item 10.3(b); and
- (iii) Termination Notice Period means the period commencing on the second anniversary of the Commencement Date and ending on the date being 30 days prior to the fourth anniversary of the Commencement Date (inclusive).
- (b) Despite anything to the contrary contained or implied in this lease, the Tenant may terminate this lease by giving a written notice of termination to the Landlord during the Termination Notice Period (time being of the essence).
- (c) If the Tenant gives a Termination Notice during the Termination Notice Period:
 - (i) this lease will come to an end on the Termination Date;
 - (ii) the Tenant must comply with all of its obligations under this lease up to the Termination Date; and
 - (iii) the Tenant must comply with all of the Make Good Obligations before the Termination Date.
- (d) Nothing in this Item 10.3 will:
 - (i) prejudice or affect any claim or demand which the Landlord may now or but for the termination have had against the Tenant for or in respect of any breach of the Tenant's covenants under this lease prior to the Termination Date; or
 - (ii) constitute or be treated as a waiver by the Landlord of any past breach of the Tenant's covenants under this lease by the Tenant.
- (e) If the Tenant does not give a Termination Notice during the Termination Notice Period, then the Tenant is no longer able to terminate this lease under this Item 10.3.
- (f) The Tenant's right to terminate under this Item 10.3 only applies whilst the Tenant is Perth Basketball Association Inc ABN 40 948 669 807.

40.210.4 House Rules

The Tenant and the Tenant's Associates must at all times during the Term comply with the Landlord's house rules, Leisure Facilities Terms and Conditions and other policies and procedures (as amended from time to time). In addition, the Tenant:

- (a) must not, subject to the Retail Shops Act, access to the Premises outside of the normal Building operating hours;
- (b) acknowledges that no staff parking is available and that the Tenant and Tenant's Associates have a non-exclusive right to use the general carpark on the Land;
- (c) the Landlord may, subject to the Retail Shops Act, notify the Tenant of any changes to operating hours for the Premises;
- (d) must comply with the Landlord's requirements and directions regarding deliveries (including pick up and drop off areas).
- (a) —

40.310.5 No operating subsidy

The Landlord acknowledges and agrees that the Landlord is under no obligation to provide an operating subsidy to the Tenant at any time during the Term.

Draft

Executed by the parties as a deed.

The Landlord:

The Common Seal of **Town of Victoria Park**)
 was hereunto affixed by the authority of a)
 resolution of the Council in the presence of:)

.....
 Signature of Mayor

.....
 Name of Mayor (please print)

.....
 Signature of Chief Executive Officer

.....
 Name of Chief Executive Officer (please print)

.....
 Date

.....
 Date

The Tenant:

Executed by **Perth Basketball Association Inc** ABN 40 948 669 807. The undersigned Officers each warrant and represent to the Landlord that the Tenant's execution of this lease is valid, binding and in accordance with the terms of its Constitution:

.....
 Authorised Officer's signature

.....
 Authorised Officer's signature

.....
 Authorised Officer's name (please print)

.....
 Authorised Officer's name (please print)

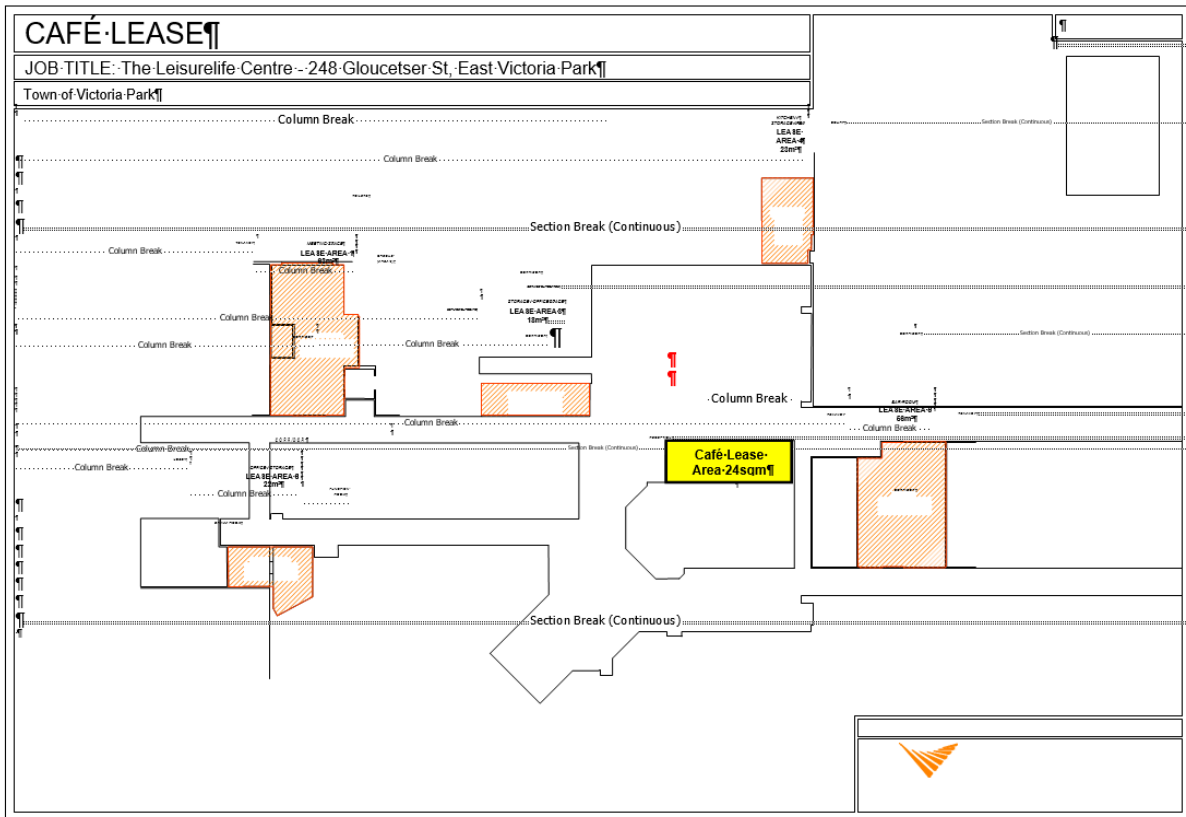
.....
 Authorised Officer's position (please print)

.....
 Authorised Officer's position (please print)

.....
 Date

.....
 Date

Annexure A – Premises Plan



DRAFT